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PROCEEDINGS OF 1960

THE AMERICAN POLITICAL SCIENCE ASSOCIATION

VOLUME 2

The American Political Science Association
1527 New Hampshire Avenue, N.W.
Washington, D.C. 20036

TABLE OF CONTENTS

VOLUME 1

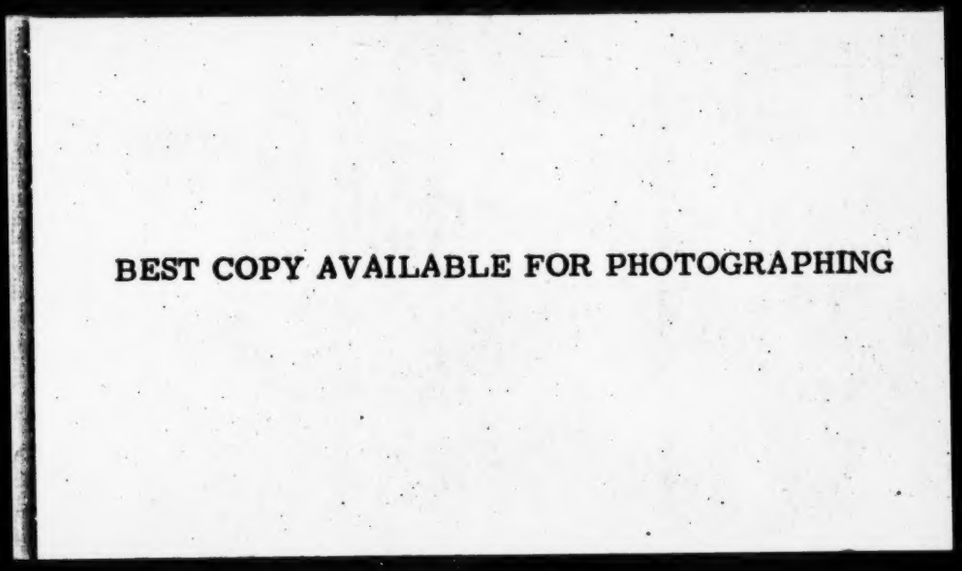
Albright, William F.	Eric Voegelin's Order and History with Special Reference to Volume I
Alexander, Herbert E.	Responsibility in Party Finance: Breaking the Bottlenecks
Arendt, Hannah	What Is Action?
Asher, Robert E.	Discussion of Paper by David Gordon on "Regional Approaches to Economic Development"
Barton, Rebecca C.	Words and Deeds in Civil Rights (The Behavioral Science and Political Responsibility)
Bay, Christian	Behavioral Science and Political Responsibility
Berns, Walter	The Behavioral Sciences and the Study of Political Things: The Case of Christian Bay's The Structure of Freedom
Binder, Leonard	The Transition to Democracy in the Middle East
Braybrooke, David	The Future of the Public Interest
Canavan, Francis	The Levels of Consensus
Carney, Francis M.	Is There a Liberal Party?
Carroll, Holbert N.	Congressional Politics and Foreign Policy in the 1960's
Clark, Peter B.	Civic Leadership: The Symbols of Legitimacy
Cropsey, Joseph	Political Life and a Natural Order
Cummings, Milton C. Jr.	The Occupational Standing of the Federal Service--Fact and Fiction
Danelski, David J.	The Influence of the Chief Justice in the Decisional Process of the Supreme Court

David, Paul T.	The Record of 1960 in Selecting the Presidential and Vice Presidential Candidates
Davidson, James F.	Political Science and Political Fiction
Doig, Jameson W.	Federal Political Executives: Problems and Processes of Selection
Dupre, J. Stefan Gustafson, W. Eric	The "New Public Administration:" Problems and Benefits for the Contractor in Government by Contract
Epstein, Leon D.	Constituency Parties in the British System
Fenton, John H.	Northern Politics
Friedrich, Carl J.	Political Leadership and the Problem of Charismatic Power
Frost, Richard T.	Federal-Interstate Agency for the Delaware Basin
Gordon, David L.	Regional Approaches to Economic Development
Hardy, Leroy Clyde	The Practice and Theory of Reapportionment
Hart, Donn V.	Overseas Americans in Southeast Asia: Fact in Fiction?
Heidenheimer, Arnold J.	German Parties Between Chancellor and Constituency
Heyman, Victor K.	The Problems and Benefits for the Government in Administration by Contract
Irish, Marian D.	Foreign Policy-Making Under President Eisenhower: A Study in Executive-Legislative Relations
Jordan, Gerald I.	The Impact of Crises Upon Judicial Behavior
Kaplan, Morton A.	Is International Relations A Discipline?
Keenleyside, H. L.	Some Administrative Problems of the United Nations
Kling, Merle	C.P. Snow's Image of the Political Process: The Masters

VOLUME 2

Lipset, Seymour M.	The Law and Trade Union Democracy
Lindsay, Kenneth	Personal Contacts and Public Policy: A Realistic Approach
Logue, John	Is International Relations A Discipline? A Qualified Assent
Lyons, Gene M.	Civilian Control of the Military: Changing Concept
Matthews, Donad R.	Patterns of Influence in the U.S. Senate: Five Approaches
McCoy, Donald R.	The Republicans: Have They Lost Their Future?
Munger, Frank J.	Federal-Interstate Compact Cooperation: The Political Problem
Niebuhr, Reinhold	Consensus in a Democratic Society
Neustadt, Richard E.	Reorganizing the Presidency in 1961: A Preview of the Issues
Ogden, Daniel M. Jr.	Party Theory and Political Reality Inside the Democratic Party
Palamountain, J.C. Jr.	The Administrator's Role--Issues and Hypotheses
Plank, John N.	Democratic One-Party Systems: The Mexican Case
Pool, Ithiel de Sola	Private and Public Diplomacy
Ramey, James T.	The Joint Congressional Committee on Atomic Energy and the Civilian Control of Atomic Energy
Schachter, Ruth	Single Parties Systems in West Africa
Schubert, Glendon	Is There a Public Interest?

Shapiro, Harry H.	Limitations of the Federal Criminal Statute, 18 U.S.C. 242, in Prosecuting Civil Rights Violations
Smallwood, Frank	The Joint Committee on Atomic Energy: Congressional 'Watchdog' of the Atom?
Swisher, Carl B.	The Supreme Court and "The Moment of Truth" (Presidential Address)
Tarr, David W.	National Strategy and Military Technology: Towards the Reformulation of the Problems of Civil-Military Relations
Tucker, Robert C.	The Comparative Politics of Movement-Regimes
Thurber, Clarence E.	Lessons from Efforts to Train Foreign Administrators in the United States
Vose, Clement E.	The Judiciary and the Local Power Structure: An Interest Group Approach
Weidner, Edward W.	The American Education of Foreign Admininstators: Lessons from American Training Programs in Foreign Countries
Wilson, James Q.	Negro Civic Leaders
Wilson, Richard B.	Antitrust Policy and Constitutional Theory
Wirt, Frederick M.	Suburban Patterns in American Politics
Zimmermann, F. L.	The Feasibility of a Federal-Interstate Partnership in Water Sources Development with Particular Reference to the Delaware


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The Law and Trade Union Democracy

by

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler-Hilton Hotel, September 8 - 10, 1960.

The Law and Trade Union Democracy[1]

by Seymour Martin Lipset

Concern with the internal government of trade unions is probably as old as the institution itself. Nineteenth century labor history is filled with discussions of constitutional structure. With power and recognition as a legitimate institution in the mid-twentieth century, experimentation with different forms of union government declined and a new period emerged - a period marked by a growth in realpolitik, by the incorporation of the ideology of business unionism, which implies that a union cannot afford to adapt its policies to the logic of idealistic ideologies. Although constitutions continue to differ among various unions, the nature of union government settled down to what has been described as a one-party oligarchy. With few exceptions the national administrations became political machines remaining permanently in power, and coopting their new members.[2]

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[1]This paper has been written as part of a general investigation of the condition of the American labor movement being conducted by the Trade Union Committee of the Fund for the Republic. I would like to express my appreciation to the Fund for its support of this work. I would also like to acknowledge a debt of gratitude to Faith Denitch for research assistance, and to Laurel Fujishige and Daniel Bell for editorial advice.

[2]Perhaps the most balanced recent analysis of the facts and sources concerning trade-union government may be found in William M. Leiserson, American Trade Union Democracy, (New York: Columbia University Press, 1959). Another good discussion is Philip Taft, The Structure and Government of Labor Unions, (Cambridge: Harvard University Press, 1954).

In most unions the characteristic road to high office is to be designated as a successor by a higher-up or previous incumbent. The death or retirement of a dominant leader occasionally offsets a succession battle, as occurred in the United Steelworkers of America following the death of Philip Murray, but a much more characteristic pattern is the promotion of the man next in line for the office. Although the succession to the leadership of the Carpenters' Union by Maurice Hutchinson, the son of the previous president, is atypical in its exhibition of nepotism, its occurrence in one of the AFL's most important affiliates is an indication of how dominant an administration group can be. So common is one-party oligarchy that the major remaining defender of the Soviet Union within the labor movement has attempted to justify the Communist totalitarianism by pointing to its parallels with the government of American unions:

> What is totalitarianism? A country that has a totalitarian government operates like our union operates. There are no political parties. People are elected to govern the country based upon their records... That is totalitarianism. If we started to divide up and run a Republican set of officers, a Democratic set, a Communist set and something else we would have a hell of a time. [3]

Though the fact of union oligarchy has occasioned little concern within the ranks of union politicians, who see it as necessary and even proper, the same has not been true for both friends and enemies of labor outside union ranks. And increasingly as trade

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[3] Harry Bridges, in Proceedings of the Seventh Biennial Convention I.L.W.U., April 7-11, 1947 (San Francisco: 1947), p. 178.

unions have become accepted as a key power group in the larger society, the question of how representative and democratic they are internally has become a matter of public inquiry and controversy. The recent investigations by the McClellan Committee, followed by the passage of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959, obviously have made the question of union government a legitimate issue for general concern. In a certain sense, the unions themselves must acknowledge some responsibility for this development, since they welcomed and supported government intervention on their behalf as collective bargaining agencies when they supported the Wagner Act in the mid-thirties.

This paper is designed as a contribution to that discussion. It discusses a number of topics: the sources of the current interest in union government; the conditions accounting for the dominant pattern of union government in America; various past efforts to change union practices by legislation; some of the possible effects of the LMRDA and reform legislation in general; the nature of and potential for internal opposition; and possible activities for concerned outsiders.

The Concern for Union Democracy

The shift in our national ideological cycle from the leftism or liberalism characterizing the period from 1930 to 1950 to the dominant conservatism of the 1950's has manifested itself in a shift in the kind of institution vulnerable to attack. Although a variety of factors are involved, this has been a major one in the focus on union

democracy and the rights of union members. The most newsworthy Congressional investigations of the earlier period were investigations of the munitions makers (the Nye Committee), of employers' anti-labor activities (the LaFollette Committee), and of profiteering and business inefficiency during the war (the Truman Committee).[4] It is not my purpose here to analyze the sources of cyclical political change in American life; but it is important to associate the current interest in the undemocratic aspects of trade union life with the general shift to the right in American political society, for the result of this shift has meant increased strength for conservative ideology. For example we may note a change in attitude toward business among sections of the academic community: in the thirties the major figures of American industry such as Ford, Carnegie, and Rockefeller were being portrayed as "robber barons," whereas in the fifties, various historians were writing of them in positive terms as entrepreneurial geniuses who deserved the greatest credit for the rapid expansion of American industry.

Paralleling the larger political trend was a drastic change in the social and political situation of the union movement. The relatively weak union movement of the early thirties had become the large established 16 million member AFL-CIO of the fifties. By then, every major industry, with the exception of chemicals and textiles, had accepted unions as the legitimate representatives of

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[4]The major exception to this generalization, the various committees investigating Communist activities and subversion, only became important with the coming of the Cold War.

their employees, the government guaranteed the right to organize and to bargain collectively, and the unions had strong ties to and influence with the Democratic party.

Perhaps as important as the shift in the power position of unions has been the change in the relative income position of the different occupational classes. During the 1930's and early forties, white collar and professional employees were much better off both in terms of salary and job security than manual workers. Occupations such as teaching or civil service employment generally brought high salaries as compared to those of the average industrial worker. Unemployment was considerably lower among white collar workers of all varieties than among wage-earners, and large sections of the former possessed various special privileges such as regular vacations and participation in pension programs. The favored position of white collar workers and salaried professionals has gradually declined under the impact of full employment, secular inflation, and increased unionization among manual workers. The increase in the income and fringe benefits of manual workers have far surpassed that of the non-manual group, and many of the latter have, in fact, declined in real income. This change in relative economic situation may have contributed to a loss of sympathy among the employed middle classes, both for the manual worker and for unions in general.

But if a change in the larger social, political, and economic climate helps to account for the fact that it is now labor rather than

business which faces attack from Congressional committees, journalists, and academicians, it does not explain why so much of this criticism should have taken the form of a moral crusade against violations of internal union democracy. There are many American institutions whose practices are as undemocratic as trade unions but which have not been subject to severe criticism for this fact. Few would argue, for example, that the American Medical Association, the American Legion, or the National Association of Manufacturers are models of democratic rectitude. Most nominally democratic private associations in America can properly be described as governed by one party, self-perpetuating, and self-recruiting oligarchies. Why, then, pick on unions?

The concern for union democracy emanates from several different sources: the image which unions perpetuate of themselves as champions of the underprivileged; the view of many intellectuals that unions are or should be agents in the building of a better society; the belief in the need of a counterbalance to the employer's power; and the view that an institution to which is delegated some of the authority of a democratic state has a special obligation to be democratic in the exercise of this authority. In addition, in the United States, at least, the trade union movement has demanded and secured a high degree of control over representation rights for all workers in given companies, as well as power over hiring and firing within an industry.

There are two sides to the trade union movement which are

emphasized by participants and observers at different times and in different contexts. Daniel Bell has called them the "market unionism" and the "social movement" aspects of trade unionism.[5] On the one hand, unions are narrowly concerned with the economic interests of their members, and will use any method to advance their specific objectives, even to the point of making arrangements which may adversely affect the interests of other workers employed by the same companies. On the other hand, unions, from their beginnings, have perceived themselves and have been perceived by others - particularly left-intellectuals and liberal politicians - as the most important part of the social reform movement concerned with redistributing income, status, and power. As part of this larger movement, trade unions have supported the extension of the suffrage to all, increased public education and social security legislation. And though the American unions have been more or less explicit advocates of business as contrasted with ideological unionism, they have always had a general political program which included policies on many non-labor matters. Currently, for example, the unions have policies with regard to civil liberties and civil rights, medical care for the aged, expenditures for schools and foreign policy. On the whole, these policies have consistently followed the positions advocated by liberal political forces. The very rhetoric used by labor leaders to describe their objectives and social role usually has reflected this general identification with the values of a more

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[5] Daniel Bell, The Decline of Ideology, (Glencoe, The Free Press, 1960), pp. 208-221.

inclusive democracy, of increased rights for all, particularly the various depressed sectors of the population.

During the organization drives of the 1930's, many intellectuals dedicated to larger movements for social reform or for socialism, did a great deal directly and indirectly to win public acceptance of unionism. The overwhelming majority of American intellectuals have been on the left politically, and their support has been a major asset to unions concerned with winning sympathy from the broader public.[6] But because these helpful intellectuals have rarely been interested in business unionism, the trade union movement has frequently been subject to serious criticism from these friends of labor for their failure to live up to the intellectuals' idealistic image of a reformist and democratic union movement.[7]

Although much of the intellectuals' criticisms of oligarchic union government come from men who see such failings as strongly linked to the weakness of the "social movement" aspect of

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[6] S. M. Lipset, Political Man, (New York: Doubleday, 1960), pp. 313-323.

[7] Many labor leaders have voiced their annoyance at such criticism. For example, the President of the International Association of Machinists, in replying to Clark Kerr's analysis of deficiencies in union democracy, criticized the intellectuals for taking an unfriendly approach to the labor movement now that its most dynamic (and bloodiest) days seem to be past. "[The intellectuals] became disenchanted with organized labor when the skirmishes of the 1930's were past. They look nostalgically at the good old days of mass organization, sit-down strikes and Memorial Day massacres, and conclude that, since such things are past, labor no longer has any cause and the [sic] labor's prime concern now must be one of internal administration and conformity to the pattern of society at large." A. J. Hayes, "'Union Leaders of Their Own Choosing' - A Review," AFL-CIO Education News and Views, 3(April, 1958), p. 1. Kerr's original analysis is in Unions and Union Leaders of Their Own Choosing, (New York: The Fund for the Republic, 1957)

American unionism; others have argued that there is a conflict between socially oriented unionism and union democracy. For example, Paul Jacobs has suggested that highly democratic unions, as a consequence of being concerned with membership wishes, are narrowly devoted to the interests of their craft, to the detriment of the public or the interests of the union movement as a whole. To support this thesis, he points out the International Typographical Union which though it has an unusually high degree of internal democracy, has engaged in a variety of collective bargaining policies and politics tactics, in his judgement either offend public morality (requiring that work which is reproduced from matrices be reset each time it is used for a different publication simply to make work) or the interests of the labor movement (opposing permanent election registration laws because annual registration means more work for printers.) On the other hand, he indicates that an autocratically-led union like the International Ladies Garment Workers Union has long been known for its broad and liberal social policies.[8]

Others have argued that union democracy is causally related to irresponsible bargaining demands and unnecessary strikes on the part of those union leaders who face the possibility of deposition in a succeeding election and so seek to justify their leader-role by a show of extreme militancy advocating major contract improvements.

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[8]Paul Jacobs, "Union Democracy and the Public Good - Do They Necessarily Coincide?", Commentary, 25 (1958), pp. 68-74.

No one, to my knowledge, has attempted to compare systematically whether democratic unions are more irresponsible in the economic demands and social policies than dictatorial ones. The ITU's practice of retaining so-called bogus work, that is, unnecessary reproductions of work actually run off from matrices, is often used as an extreme illustration of feather-bedding, but it is also obvious that many of the railroad brotherhoods, which are much less democratic, join with the ITU in attempting to retain the historic policies that keep more workers than are necessary on the job. The highly dictatorial United Mine Workers ran more strikes during war-time than any other union. Currently, the labor organization most often cited as an example both of disrespect for the norms of the larger polity and of aggressive bargaining tactics is the highly oligarchic Teamsters' Union.

There is little evidence that an autocratic union leadership will actually behave more in accord with the public interest than one which is democratically controlled. But whatever relationshi= may actually exist between forms of union government and collective bargaining tactics, there can be little doubt that corruption, racketeering, and other practices detrimental to the public interest are much more likely to flourish in dictatorial unions that in those which are more subject to membership control. As Clyde Summers has said:

> It is argued that decisions required in collective bargaining are not appropriate for the democratic process. In part this rests on the fear that if bargaining is constantly subjected to political pressures, union officers in the grasping for votes will make unrealistic demands, and process worthless

> grievances.... Perhaps union leaders who were not answerable to the members could be more responsible to the public but the critical question is whether they would. Is there really good reason to believe that a union leader who came to power in an undemocratic union, and who was answerable only to the entrenched group through whom he gained power, will in fact demonstrate more social responsibility than the leader who is answerable to his whole membership? Democracy does not guarantee responsible leadership, but an authoritarian system promises even less.[9]

The concept of representativeness is clearly central to the legitimacy of trade-unions. Jack Barbash has even argued that a union must be "an instrument of interest representation[or] it is nothing."[10] This does not mean, of course, that autocratic unions do not fulfill basic functions, but, rather, that if unions are not democratic they lose much of their ideological justification. As Archibald Cox says: "An autocratic union may serve the material demands of its members by bargaining effectively for higher wages and increased benefits. None except a democratic union, however, can achieve the idealistic aspirations which justify labor organizations."[11]

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[9] Clyde Summers, "The Public Responsibility of Unions in Internal Union Affairs," (dittoed), pp. 8-9.

[10] "Union Democracy," Bureau of National Affairs, Daily Labor Report, November 25, 1957.

[11] Archibald Cox, "The Public Interest in Internal Union Affairs," mimeographed (1959), p. 12.

A different argument for union democracy raised by politicians and lawyers more than by academic intellectuals concerns the status of American unions under law. It is frequently suggested that the government has an obligation to help maintain democratic procedures within unions because of their quasi-public character under the National Labor Relations and Railway Labor Acts. Kurt Hanslowe says:

> If the basis of our policy is to be one of channeling enforcement of and control over individual rights into and through the collective bargaining relationship, the collective bargaining agent must not only be obliged to act fairly and honestly, but the union must also contain within itself channels for expression and participation through which the individual's voice can make itself felt. Only thus can it be legitimately asserted that collective representation should be given priority. Only thus do we have assurance that collective representation will be fair, honest, and effective.12

Cox points out further:

> Labor unions occupy their present position largely by force of law. Under the National Labor Relations Act, a union which acts as the bargaining representative has power, in conjunction with the employer, to fix a man's wages, hours, and other conditions of employment without his assent. The individual employee may not lawfully negotiate with his employer. He is bound by the union contract. As a matter of practice, if not in legal theory, the union also controls the grievance procedure through which a man's contract rights are enforced. The government which gives unions this power has the concomitant obligation to provide safeguards against abuse. The most effective safeguard is legal assurance that unions will be responsive to the desires of the men and women whom they represent.13

12"Individual Rights in Collective Labor Relations," Cornell Law Quarterly, 45 (1959), p. 52.

13"The Role of Law in Preserving Union Democracy," Harvard Law Review, 72 (1959), pp. 610-11.

These arguments, of course, run counter to the traditional view of the trade union as a voluntary association, and because they maintained this view the courts for many years were reluctant to intervene in disputes between unions and their members. Before the government became a protector of union rights to organize and bargain, Zechariah Chaffee argued in a now famous article that if the ability to earn a livelihood depends upon membershi p in a voluntary organization, the courts should grant relief in expulsion cases.[14]

Although most American discussions concerning the role of union democracy stress the consequences of diverse forms of union government on collective bargaining, increasing there is good reason to relate this concern to the political role of labor. Increasingly, American economists are tending to agree that their studies demonstrate that unions have little enduring or major effect on the distribution of industrial income, or on the real wages of workers.[15] If this conclusion is valid (there is still much debate

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[14]Zechariah Chaffee, Jr., "The Internal Affairs of Associations Not For Profit," Harvard Law Review, 43(1930), pp. 993-1029.

[15]See John Dunlop, Wage Determination under Trade Unions (New York: Macmillan, 1944), and The Theory of Wage Determination (London, Macmillan, 1957). In a detailed summary of research on the subject, Clark Kerr concludes that there is no evidence that collective bargaining has increased labor's share of the national income in the United States, and further than there is "no significant relationship between the degree of unionization and labor's share, industry group by industry group." (See "Trade-Unionism and Distributive Shares," The American Economic Review, (1954), p. 291.) An opposite conclusion is reached by Robert Ozanne, "Impact of Unions on Wage Levels and Income Distribution," Quarterly Journal of Economics, 78(1959), pp. 177-196.

about it among economists), then it would imply that the "social movement" aspect of the role of unions is more important both for their members and for society as a whole. One leading labor economist has in fact argued that unions have two primary functions, to "protect the worker against arbitrary employer action... [and to] provide an effective means of stabilizing the political power of low income groups."[16] Thus if a key justification of unions is their role as the representative of the lower strata in the polity, as the counter-lobby to that of business, then it is more important than ever to have democratic unions which actually speak for their members.[17]

The question as to whether a trade-union leadership actually reflects the opinion of its membership has most frequently occasioned comment and action by those who disagree with the politics of the leadership. In a number of countries, the problem of representativeness has been perceived as most crucial when Communists have gained control of unions and attempted to use them for political purposes. It is estimated that at the height of their power in the 'forties, the Communists controlled unions containing between one-quarter and one-third of the membership of the CIO. This control was not questioned by the leaders of the other CIO unions so long as the Communist line was congruent with the policies of

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[16] Melvin W. Reder, "Job Security and the Nature of Union Power," Industrial and Labor Relations Review, 13 (1960), pp. 349-362.

[17] See Summers, op cit, pp. 11-12.

the rest of the federation. But the Cold War and the Communists' effort to build the Wallace Progressive Party in 1948 created a basic split between them and the rest of the CIO leadership. The result was the expulsion of those unions which followed the CP line.[18]

Similarly, in Australia, the Communists won control of unions containing almost 1/4 of the entire trade union membership in the country, including important unions in basic industry. "They had nearly half the delegates at the 1947 ACTU [Australian Council of Trade Unions] Congress, could generally get majority support for their proposals, and were only narrowly defeated in their bid to gain a self-perpetuating grip over the ACTU interstate Executive." Again, Communist domination of unions was tolerated until their use of this power became unbearable. A politically-inspired strike wave finally led both Laborites and Liberals to support legislation designed to eliminate Communist abuses of union democracy.[19]

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[18]For a detailed discussion of the role of the Communists in the American labor movement see David J. Saposs, Communism in American Unions, (New York: McGraw-Hill Book Co., 1959) and Max M. Kampelman, The Communist Party vs. the CIO: A Study in Power Politics, (New York: Frederick A. Praeger, 1957.)

[19]Herbert E. Weiner, "The Reduction of Communist Power in the Australian Trade Unions: A Case Study," Political Science Quarterly, 64 (1954), pp. 390-412.

In Britain today, Communist control of the Electrical Workers Union has resulted in serious discussion in many quarters concerning the state of self-government within that union. The left socialist New Statesman has published exposes of the shoddy methods used by Communists to maintain themselves in power.[20] Defenders of Communist rule in the Electrical Workers Union have written the New Statesman arguing that similar methods are used in non-Communist unions.

The unrepresentative character of Communist union leaders is evident in countries in which the Communist party is extremely weak, but it is difficult to demonstrate that non-Communist leaders often are equally unrepresentative in their political attitudes. A striking example of this occurred in 1940, when John L. Lewis endorsed the candidacy of Wendell Wilkie for President. A study of miners' voting behavior revealed that the large majority of them continued to back Roosevelt.[21] More recently, the largest single national union in Great Britain, the Transport and General Workers Union, which casts well over one million block votes at Trades Union Congress and Labor Party conventions, has been backing left-wing positions, whereas in previous decades it had been the stronghold of the right wing. The shift did not occur from any

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[20] A recent such article is John Freeman, "The Scandal in the ETU," New Statesman, 59 (February 27, 1960), pp. 227-228. The Economist has also repeatedly reported on the shoddy governmental practices within this union. See for example the issues of December 20, 1958, p. 1065; October 31, 1959, pp. 404, 407; November 28, 1959, p. 845.

[21] Irving Bernstein, "John L. Lewis and the Voting Behavior of the CIO," Public Opinion Quarterly, 5(1941), pp. 233-249. According to Gallup Poll 79 percent of all CIO members voted for Roosevelt against the position taken by their president.

profound change in membership attitude or situation of the organization, but was rather accidental. Ernest Bevin and Arthur Deakin, the Union's leaders since 1921, were right-wingers.[22] Deakin died prematurely in 1955, however, without arranging for a conservative successor, and a relatively young left-winger, Frank Cousins who had not been a member of the national leadership long enough to accumulate the more conservative and traditional views, succeeded to the presidency. Thus the balance of power within the Trade Union Congress and the Labor Party dramatically changed.

The three major American apparel unions whose strength was based for many years on New York Jewish garment workers provide another interesting illustration of the way in which diverse leadership of comparable organizations formed of members with similar backgrounds may differ widely in political tactics. The furriers' union led by Ben Gold remained a mainstay of the Communist Party for many decades, while the International Ladies Garment Workers Union under the leadership of David Dubinsky fought the Communists in every way possible. Sidney Hillman as leader of the Amalgamated Clothing Workers Union pursued a political path which sometimes meant alliances with the Communists,

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[22] See Joseph Goldstein, The Government of British Trade Unions, (London: Allen and Unwin, 1952); and V.L. Allen, Trade Union Leadership, (London: Longman's Green and Co., 1957).

and on other occasions meant fighting them. And the rivalry between Hillman and Dubinsky often meant that the two large Jewish dominated garment unions were rarely within the same political camp, each leaders had his own "third party" for a while.

Within the labor movement when men forcefully oppose the political tactics of a given group of leaders their concern is almost always with the policies of a specific oligarchy, not with the phenomenon itself. At various times factional groups have succeeded in overthrowing a given union leadership, and in the context of the struggle have charged the incumbents with denial of basic democratic freedoms. Almost invariably such groups have then retained the anti-democratic mechanisms which they criticized. The principal Communist trade union strategist, William Z. Foster, was one of the first to attempt to apply Robert Michels' analysis of the sources of oligarchy within the German labor movement to American unions, and he was clearly concerned not with establishing democratic procedures, but with using Michels' points as a political weapon.[23]

The Conditions of Union Government

Union leaders are no more impervious to public opinion than are the leaders of other institutions in American society. Why

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[23]See William Z. Foster, Misleaders of Labor, (Chicago: Trade Union Educational League, 1927). Sylvia Kopald in an even earlier book glorifying left-wing union upheavals and condemning the AFL hierarchy brought Michels' "iron law of oligarchy" to bear on an analysis of American labor. Rebellion in Labor Unions, (New York: Boni and Liveright, 1924).

then, in view of the widespread expectation that unions be democratic, do they not conform more than they do to democratic practice? Although there have been many articles and books which have examined the sources of union oligarchy in detail some of the main points are summarized here.[24]

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[24]For a more detailed discussion of the factors affecting union government, S. M. Lipset, Martin A. Trow, and James S. Coleman, Union Democracy (Glencoe, Ill.: The Free Press, 1956), esp. pp. 9-13 and 393-418. Joel Seidman, etal, The Worker Views his Union, (Chicago: University of Chicago Press, 1958), esp. pp. 164-241; Robert F. Hoxie, Trade Unionism in the United States, (New York: D. Appleton and Co., 1926), pp. 177-187. John R. Coleman, "The Compulsive Pressures of Democracy in Unionism," American Journal of Sociology 61(1956), pp. 519-526; George Strauss, "Control by the Membership in Building Trades Unions," ibid., pp. 527-535; Arnold S. Tannenbaum, "Control Structure and Union Functions," ibid., pp. 536-545; Daisy L. Tagliacozzo and Joel Seidman, "A Typology of Rank-and-File Union Members," ibid., pp. 546-553; S. M. Lipset, "The Political Process in Trade Unions: A Theoretical Statement," in Walter Galenson and Seymour Martin Lipset, eds., Labor and Trade Unionism: An Interdisciplinary Reader (New York: John Wiley & Sons, 1960), pp. 216-242; Leonard I. Pearlin and Henry E. Richards, "Equity: A Study of Union Democracy," ibid., pp. 265-281; Clark Kerr, Unions and Union Leaders of Their Own Choosing, op cit.; Philip Taft, op cit; William Leiserson, op cit.

For detailed bibliographies on the subject see, Mary R. Heslet, "Bibliography: Internal Affairs of Labor Unions: Administration and Regulation," in Government Regulation of Internal Union Affairs Affecting the Rights of Members, Selected Readings prepared for the Subcommittee on Labor of the Committee on Labor and Public Welfare U.S. Senate. (Washington: Government Printing Office, 1958), pp. 292-297; Daisy L. Tagliacozzo, "Trade Union Government: its nature and problems a bibliographic review, 1945-55," American Journal of Sociology, 61 (1956), pp. 554-581.

The complexity of the American economy, the centralization of industry, and the power of the corporate employers all have contributed to the need for efficient, technically competent administration in unions, and to the centralization of union power in the national union.[25] It is inevitable that the important decisions are increasingly made at a level quite remote from rank and file control and that even matters of vital concern to the rank and file, such as the union contract, are negotiated by experts, and simply ratified by the membership. The demands of local unions are systematically subordinated to the prevailing system of national pattern bargaining.

The internal structure of American unions reinforces the bureaucratic tendency to unresponsiveness. Because of its ultimate character as a combat organization whose usefulness to its members lies in its collective strength in relation to management, the trade union has demanded more control over its individual members than do most types of associations.[26] This requirement reinforces the advantages for the perpetuation of administration power which are inherent in the nature of large-scale organization.

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[25]The view that oligarchy is inherent in large-scale organization is applied to trade unions by Will Herberg in "Bureaucracy and Democracy in Labor Unions," The Antioch Review 3 (1943), pp. 405-417.

[26]The problem of discipline v. democracy is discussed by Joel Seidman, in Democracy in the Labor Movement (Bulletin 39, February 1958) (Ithaca: New York State School of Industrial & Labor Relations, Bulletin 39: February 1958), pp. 4-8.

The administration already controls the organization's finances, the paid staff, and the internal communications system of the union (which is usually the only source of information about internal union affairs that exists.) The full time officials are the authorized interpreters of the union constitution and of union regulations; they have the power to discipline locals and individual members and the right to hear appeals. Most of the time, the paid officials work together in a strictly hierarchic and smoothly functioning political machine, and are likely to regard any opposition to their policies as a form of treason to the union itself.

When the membership is scattered, or when the officials have complete control over jobs in the trade through the hiring hall or the shape-up, the full-time functionary is in an almost unassailable position. Control by the officers is in turn, made easier by rank and file apathy, which itself is partly a result of the fact that the local handles less and less of the important business of the union, and few members see why they should be interested in routine and petty business matters.[27]

Since most union officials have risen from the ranks of industrial workers to prestige positions allowing them to enjoy many middle class comforts, the full time union functionary is powerfully motivated to maintain himself in office. Defeat in a union election usually would mean having to return to a relatively low status, low-paying occupation. And many union officials are

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[27] ibid., pp. 21-25.

thus led by self-interest to circumvent efforts at greater membership control and democratic rights.

The weakness of democratic procedures within American unions is particularly noteworthy today since the individual worker has no effective external organizational alternative if he is dissatisfied with union policy and practices. While there are many arguments against dual unionism, and particularly against the maintenance of the AFL and CIO rivalry, it remains true that the existence of two unions with similar jurisdictions serves to make each of them more responsive to membership wishes. In this sense the worker in America is handicapped in a way that his European counterpart, in a number of countries, is not. Walter Galenson suggests in a forthcoming study of the governments of European unions, that in countries where unions have a stable and legitimate position, dual unionism contributes to both the democratic character and the solidarity of the different union movements.[28] Even in

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[28] Whether rival unionism will have positive or negative effects on union democracy and economic strength depends greatly upon other factors in the situation, especially the general acceptance of trade unionism in the country under consideration. Walter Galenson says: in Trade Union Democracy in Western Europe (Berkeley: The Fund for the Republic, 1960, mimeographed), pp. 112-114. "The French and Italian experience illustrates clearly how dangerous internal division can be to a labor movement which has not gained general acceptance. When trade unions are still in their fighting stage, when collective bargaining is impossible because of gross inequalities in bargaining power, and when industrial enterprises are run as autocracies, concepts of trade union democracy and membership rights have little meaning... In the Low Countries, in Scandinavia, Austria, and Great Britain, trade unions have gained an unassailable position... In these circumstances, competition among unions has an altogether different significance. Here it may act as a powerful lever for the furtherance of internal union democracy."

Great Britain which has one overall federation . "In many industries workers may choose between several unions when they join, and they may leave one union and join another."[29] There are, however, various agreements among the members of the T.U.C. to prevent widescale raiding of each others members. These do permit, however, a limited amount of competition for members among affiliates of the Trades Union Congress, and an aggrieved member can join a rival union and yet stay on the same job in many cases.[30]

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[29] B. C. Roberts, Trade Union Government and Administration in Great Britain, (Cambridge: Harvard University Press, 1956), p. 51. It is in this context that British writers have urged that union democracy is of only secondary importance for good unionism. V. L. Allen, for example, does not see membership participation as necessary for vital unionism because British unions are voluntary organizations. He says:

> One cannot depend on a universal and effective participation of ordinary members in union affairs to act as guardians of their own interests. It just does not occur. Neither can one rely on the use by leaders of democratic methods, given rank-and-file indifference... If, however, the penalty for inefficiency, the misuse of resources or the abuse of power is severe, then there will be little deliberate deviation by officials generally and by leaders in particular from the course set by the requirements of the workers. The voluntary nature of trade unions provides such a penalty. A trade-union leader who is in continual fear of losing his members will inevitably take steps to satisfy their wants. .....
>
> Trade Unions that operate 'union-shop' or 'closed-shop' agreements are in a different position, for they become, in effect, compulsory societies... In such cases it is important that the union constitutions should be democratic and that they should be used effectively by rank-and-file members. It is so important, in fact, that it justifies the intervention of Parliament to supervise the working of the constitutions in exactly the same way as the control by Parliament of any other form of private concentration of economic power is justified. (italics added.)

Power in Trade Unions, (London: Longmans, Green, and Co., 1954), pp. 63-4.

[30] Cyril Grunfeld, "Trade Unions and the Individual: A Study of Recent Developments in England," Journal of Public Law, 7 (1958) p. 319; and Walter Galenson, op. cit.

Corruption and Aggresiveness as Aspects of the American Way of Life

While corruption and oligarchy within unions are closely related in that corrupt union officials are even more powerfully motivated than honest ones to circumvent democratic procedures, and keep office, it is important to recognize that they are distinct phenomena. On the whole, as various students of the European labor movement from Robert Michels before World War I to Joseph Goldstein in recent years, have pointed out most European trade unions are effectively dominated by a self-cooptating oligarchy. What is relatively unique about American labor government, as compared with that of northern Europe and Great Britain, is the problems of corruption, racketeering, and conflict of interest.

Perhaps even more surprising to European observers is the evidence that the rank and file sometimes voluntarily accept such practices. All the exposures concerning corruption inside the International Longshoremen's Association did not prevent that union from winning two government conducted secret ballot elections in contests with an AFL-CIC rival.[31] The Teamsters' Union is one of the very few major unions which has been gaining rather than losing members in the past few years.[32] Such results, of course, have had many equivalents in the American political

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[31] Daniel Bell, "The Racket-Ridden Longshoremen: A Functional Analysis of Crime," in Walter Galenson and S.M. Lipset, eds., op. cit, pp. 257-259.

[32] Fortune 61 (April 1960), pp. 233-4, 239-40.

arena. Many urban political machines, exposed as corrupt and crime-ridden, still have been able to retain large majorities in the poorer sections of the city. James Curley was elected Mayor of Boston with heavy majorities in lower strata districts, while under indictment on a charge of fraud with regard to alleged soliciting of war contracts, for which he was subsequently convicted.[33]

In order to explain, in part, the reasons for these phenomena within American unionism, it is necessary to digress briefly to a discussion of some of the values of the wider society which the trade union, as an American institution, has incorporated to a large extent.

Much in American attitudes and behavior can be explained by reference to the emphasis in our culture on achievement, on

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[33] A public opinion survey revealed that Curley secured 66% of the vote among "below average" income group, 46% in the "average" income class, and 24% among the "above average" classification. The survey indicated that most of those voting for Curley were aware of the charges of dishonesty, but again and again respondents and informants echoed the phrase, "Curley may steal from the rich, if you want to call it that, but he gives to the poor." Besides the Robin Hood legend, there was the general image among his supporters that he "gets things done." These two aspects of the Curley legend can be found in the images of a number of seemingly corrupt or dictatorial labor leaders.

For a detailed analysis of the Curley support see Jerome S. Bruner and Sheldon J. Korchin, "The Boss and the Vote: Case Study in City Politics," The Public Opinion Quarterly, 10 (1946), pp. 1-23.

"getting ahead" - the belief that everyone should try to be a "success" regardless of his background. Though it may seem paradoxical the strength of the achievement norm is closely related to that other key value of America, equality. The ideal of equality contributed to the belief that success should be the goal of all, without reference to accidents of birth, class, or color. In societies where opportunity and position is manifestly related to inherited background qualities, there is necessarily less emphasis on achievement. Tocqueville clearly noted that equalitarianism maximizes competitiveness in his description of the consequences of democracy's destruction of aristocracy when he said: "They have swept away the privileges of some of their fellow creatures which stood in their way, but they have opened the door to universal competition."[34] And a study of the comments of various nineteenth century foreign travellers concerning American workers notes that most of these European writers concluded that "social and economic democracy in America, far from mitigating competition for social status, intensified it..."[35]

The stress on these values means that Americans are much more likely to be concerned with the achievement of approved ends - particularly pecuniary success - rather than with the use of appropriate means - the behavior considered appropriate to

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[34] Alexis de Tocqueville, Democracy in America, II, (New York: Vintage Books, 1959), p. 146.

[35] Robert Smuts, European Impressions of the American Worker, (New York: King's Crown Press, 1953), p. 13.

a given position or status. In this country men are led to feel that the most important thing is to win the game, regardless of the methods employed in doing so. American culture applies the norms of a completely competitive society to everyone. Winners take all; to fail, to be poor, means disgrace.

In a society such as Great Britain, which is more particularistic and aristocratic in its values, a worker or poor person is less likely to see himself as a failure. In an achievement-oriented culture, those individuals and groups who are handicapped in some way from achieving success, and who seek to resolve their inner doubts about their personal worth, are under strong pressure to violate conventional morality, to use whatever means they can find to gain recognition. As many observers have pointed out, the relatively high crime rate in America, both in the form of lower-class rackets and white collar and business defalcations, may be perceived as a consequence of the stress laid on goals, on success. The evidence available suggests that the more deprived groups in the population approve illicit means of succeeding.[36]

The emphasis on ends, on pecuniary success, combined with an absence of the kind of class consciousness characteristic of more ascriptive societies, has also served to motivate workers to use the labor movement itself as an avenue to pecuniary and

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[36]See Daniel Bell, The Decline of Ideology, op. cit., pp. 115-116.

status gain. The position of union leader is regarded as legitimate success, not as a sacred trust or way of life. The belief follows then that a union leader is entitled to get as much as he can for himself and his family, as long as he does not injure his members' interests. American union officials receive the highest salaries for union officials anywhere, and American workers accept this fact, even as they accept the right of union officials to be private businessmen, or employers.

The ends-orientation of America as contrasted to the means orientation of an aristocratic society also manifests itself in the objectives and tactics of American trade unions. Ideologically conservative and narrowly self-interested, the American labor movement has been, in some ways, more violent and militant than the politically more radical European unions. American unions, narrowly oriented toward the economic advancement of those in their particular union or trade rather than toward changes in the social system for the benefit of the wider society, have not been loathe to employ physical violence, even dynamiting buildings, to achieve those ends.[37] They have employed mobsters in labor disputes (as have employers) and have been more free with the use of the strike weapon than any other labor movement

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[37] Louis Adamic, Dynamite: The Story of Class Violence in America, (New York: The Viking Press, 1934).

in the highly industrialized, stable, western democracies.[38] Like American industry, American labor has been brutally aggressive in attempting to achieve its goals, and for perhaps the same reasons.

Efforts at Correction

On the whole, labor spokemen who will discuss the problems of union government or corruption in an analytic fashion do not contest the argument presented here, particularly after the recent Congressional exposes, and the expulsion of the largest affiliate of the AFL-CIC from the ranks of the federation.[39] Rather, they

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[38] Arthur M. Ross and Paul T. Hartman, Changing Patterns of Industrial Conflict (New York: John Wiley & Sons, 1960), p. 19. Some of the unstable, usually less industrialized democracies like France have higher strike rates reflecting their failure to institutionalize management-labor relations.

[39] In commenting on the Congressional exposes in a speech to the AFL-CIC Industrial Union Department, George Meany, the President of the AFL_CIC indicated his surprise at the extent of such practices:

> "We thought we knew a few things about trade union corruption, but we didn't know the half of it, one tenth of it, or the one-hundredth of it. We didn't know, for instance, that we had unions where a criminal record was almost a prerequisite to holding office under the national union.
>
> We didn't know that we had top trade union leaders who made it a practice to secretly borrow the funds of their union. We didn't know that there were top trade union leaders who used the funds for phony real estate deals in which the victims of the fraud were their own union members.
>
> And we didn't know that there were trade union leaders who charged to the union treasury such items as speed boats, perfume, silk stockings, brassieres, color TV, refrigerators, and everything else under the sun."

quoted in Sidney Lens, The Crisis of American Labor, (New York: Sagamore Press, 1959), p. 105, and in Sylvester Petro, Power Unlimited - The Corruption of Union Leadership, (New York: The Ronald Press, 1959), p. 146. The original speech was reported in The New York Times, November 2, 1957, p. 1. Both the Lens and the Petro books contain detailed summaries of unsavory features of the labor movement as exposed in the Congressional hearings.

will urge that the labor movement is no worse than other institutions, such as business or government,[40] and that in any case whatever problems exist regarding internal democracy or corruption are relatively minor compared to the positive role unions play as collective bargaining agencies. If unions are accepted as the defenders of workers' interests, it is argued that self-regulation is much more desirable from a public interest point of view than any type of government or judicial intervention. This argument is elaborated with reference to the hostile treatment that the union as an anti-business organization can expect to receive from the courts or conservative politicians.

The examination of the basic structural tendencies within unions in America today strongly suggests, however, that there are severe limitations on what unions can do for themselves. Impartial review boards and/or enforced formal rights of opposition and due process exist in those unions that need them least, such as the United Automobile Workers, the Upholsterers International

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[40]For example, the President of the International Association of Machinists and Chairman of the AFL-CIO Ethical Practices Committee, A. J. Hayes, said of the recent Congressional investigations of trade unions: "I wonder if any other group in American life, whether they be doctors, lawyers, businessmen, or newspapermen, could have come out with a better record after 5 years of intensive investigation of their morals and practices? I think not...if Congress were to investigate business, industry, the professions, politics of journalism with as much energy as it has investigated organized labor, the percentage of wrongdoing uncovered would undoubtedly be substantially higher." ("A Time Bomb for all our Liberties," The Machinist, November 28, 1957.)

Union, the International Typographical Union, or the American Newspaper Guild. The unions which most need elaborate and realistic safeguards protecting basic rights are least likely to establish them. The general rule that those who hold power are not likely to consciously undermine their own position applies to union leaders as much as to any other group. What then realistically can be done to reduce oligarchy or corruption?

There is general agreement among students of the subject that the ordinary procedures of the law, which rely heavily on individuals who have grievances complaining to the courts or law-enforcement agencies, have not served to protect union members and other workers whose rights were denied. The courts are unable to afford adequate relief in many cases because they lack consistent and explicit standards, and are not familiar with union practices and, it is true that most union members are reluctant to use the courts or cannot bear the costs of litigation.[41]

The NLRB and the Railway Labor Boards have been equally inadequate in protecting individual rights against certified unions, especially in the area of discrimination and admission policies. Neither the NLRA nor the Railway Labor Act attempted

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[41] George Strauss and Don Willner, "Government Regulation of Local Union Democracy," Labor Law Journal (Aug. 1953), p. 531.

> "A study of the case law shows that the courts have been willing to prevent substantial violations in decision-making. But due to the trouble involved in going to the courts, and the courts' own difficulties in affording adequate relief, judicial intervention has not provided effective protection for [union] member rights."

to regulate the internal affairs of unions; but the federal agencies established by these Acts, in cases where they might have done so, did not try to change discriminatory union policies, partly because success in their major functions was dependent upon the cooperation of the unions they had to deal with.[42]

Because of the exposures of corruption, denial of democratic rights, the inadequacy of the courts and federal agencies, and the inability of the labor movement itself to act with sufficient vigor, many informed people who are by no means unsympathetic to unionism now feel that legislation dealing directly with internal union affairs, is necessary. Before discussing the most recent efforts at such legislation, the Labor-Management Reporting and Disclosure Act of 1959, a look at some of the sources for the failure of earlier legislative efforts to deal with union democracy may contribute to a better understanding of the limits and problems of government intervention in general.

The Taft-Hartley Act represented the first attempt by Congress to legislate, even indirectly, on internal union affairs. The concern of this Act has been for the freedom of individuals who do not want to belong to unions. The Act is based on the assumption that there are large numbers of workers who are unwilling union members, and who need government protection so that they can

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[42]Benjamin Aaron and Michael I. Komaroff, "Statutory Regulation of Internal Union Affairs - I," Illinois Law Review 44 (1949), pp. 438, 445.

quit a union without losing their job under a Union shop agreement. The Taft-Hartley Act has had no effect in promoting individual workers' rights. There have been few individuals who took advantage of rights under the Act to keep their jobs after resigning from unions that had closed or union shop agreements. The opportunity which the Act gives workers to decertify their collective bargaining representatives also has had little effect, since relatively few workers covered under union contract have been involved in any such elections since the bill's passage.[43] The section of the Act providing for union shop deauthorization polls has had even less effect since during the first two year history of Taft-Hartley less than 10,000 workers in the entire country have been involved in elections seeking to drop a union shop.[44] Congress was clearly wrong in seeking to liberate workers who were being represented by unions they did not want, or who were covered by union shop agreements which they opposed.

Reviewing the first four years of the Taft-Hartley Act, Sumner H. Slichter found that the closed shop could not be eliminated by law in industries where it was already well established. The Act "has fallen far short of realizing the hopes of

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[43] Joseph Krislov, "Union Decertification," Industrial and Labor Relations Review, 9 (1956), pp. 589-594; Philip Taft, "Internal Affairs of Unions and the Taft-Hartley Act," Industrial and Labor Relations Review, 11 (1958), p. 385.

[44] Chester A. Morgan, "The Union Shop Deauthorization Poll," Industrial and Labor Relations Review, 12 (1958), pp. 79-85.

its authors in eliminating discrimination...against non-unionists in hiring."[45]

Another section of the Taft-Hartley Act providing that unions not complying with the non-communist affidavit requirements would be denied the use of the NLRB has not only been ineffective but it violates a basic assumption of jurisprudence that "enforcement measures should be directed against those personally responsible and should be corrective rather than punitive."[46] Guilty individuals should be punished, not an organization. The tendency to mete out economic punishment to a whole union for the behavior of one or two of its leaders would appear to be derived from a lack of sympathy with the legitimate objectives of unions.

One can only agree with Sumner Slichter's conclusions based on a detailed analysis that,

> ...[the Act] has many defects which largely reflect the unfamiliarity of its drafters with labor-management relations. Large parts of the law, such as the prohibition of the closed shop, are unenforceable; other parts, such as the non-Communist oath, the restrictions on 'feather-bedding,' the restrictions on political contributions by unions, can be literally enforced, but the kind of conduct which they are intended to prevent continues anyway. Although the

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[45]"Revision of the Taft-Hartley Act," Quarterly Journal of Economics, 67 (1953), pp. 162-63.

[46]"Statement of Clyde W. Summers before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, Washington, D.C., May 8, 1958," mimeographed (1958), p. 6

> law purports to strike a balance between the interests of various groups, it sometimes tips the scales too far against the workers...[47]

The failure of the Taft-Hartley Act to accomplish its major objectives provides us with an understanding of the limitations of legislation regulating internal union affairs, and gives us insight into what types of legislation might be effective.

Legislation affecting internal union affairs should not try to further the advantages of democracy at the cost of reducing the effective bargaining strength in unions. The framers of the Taft-Hartley Act were both hostile to, and ignorant of, trade unionism as such, and hence could not help but deal inadequately with problems of internal union matters. Union members as well as union leaders viewed the Act as punitive legislation. The consequence was the unenforceability and inadequacy described above. As Archibald Cox pointed out:

> Public policy should minimize the danger [of autocratic control] without disabling the unions from performing their beneficient functions. The ability of labor organizations to bargain effectively with employers should not be impaired, for the unions' ability to advance the welfare of their members depends more upon effective bargaining than upon the conduct of union affairs.[48]

Like the Taft-Hartley Act, state right-to-work laws have hought to protect the rights of that very small minority of employees who do not want to belong to a union. Since 1944, eighteen states

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[47] op. cit., p. 179

[48] "The Public Interest in Internal Union Affairs," op. cit., p. 3.

have had legislation outlawing the requirement of union membership as a condition of hiring or continued employment. An analysis of the situation in Texas, the most highly industrialized state to have had long experience under such legislation, indicates that like the federal law, right-to-work has not resulted in freeing workers from compulsory unionism, nor has it greatly hindered organization, as the unions feared it would. Frederic Meyers says:

> In the traditional areas of the closed shop, particularly the construction industry, the old practices remain in force and violate not simply the state law but federal legislation as well. In the industries in which the union shop is the normal mode of operation, the law does not directly inhibit new organization since it only becomes operative after recognition is gained. However, there is no doubt that the statute has had an indirect effect here because it has so changed the climate of organization in some marginal situations that campaigns which would under other conditions have been won have been lost.[49]

The law has not completely eliminated compulsion even of that small number of workers who object to union membership. "Loyal members of strong unions have expressed their resentment against those they regard as 'free riders' in ways at least as objectionable, morally, and nearly as effective as if union membership were a requisite to employment."

The experience with right-to-work legislation in Texas, like that with the Taft-Hartley Act on a national scale, shows that

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[49] Right-to-Work in Practice, (New York: Fund for the Republic, 1959), p. 40.

legislation which is premised on the belief that there is a large number of union members held within unions against their will, necessarily has little effect. All the available evidence indicates that there are few such workers, and, to the contrary, that the bulk of union members accept such practices as closed and union shops as necessary for their welfare. Hence, legislation designed to free union members from leadership control by allowing them to quit the organization has little positive effect. Conversely, however, there is some evidence to suggest that such laws strengthen the position of irresponsible union minorities who are in a position to "blackmail" officials to press the case of special interests, and thus produce both greater irresponsibility in labor relations, and less responsiveness to the needs of the majority of the membership.[50] Where the decision of a polity is not binding on all members, extremists within it are given an undue share of power.[51]

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[50] According to Meyers' detailed study, right-to-work in Texas "has made the unions not more responsible but more responsive to the demands of a tiny vocal minority of the membership. It has consequently caused issues to be pressed through the grievance machinery which, under conditions of union security, would not and should not have been taken up. The union leader without security is often most responsive not to the majority of loyal union members who will remain, but to the small minority, often irresponsible, whose continued membership is doubtful." ibid, p. 41

[51] "In Texas, the absence of union security has forced unions into bargaining positions conditioned by minorities and indefensible on any grounds other than the necessity of survival. Rather than freeing managements of 'excessive' demands and policies, as the preamble to the statute foresaw, it probably faced some managements, both in grievance procedures and over the bargaining table, with more objectionable demands than would have been the case if a union shop had prevailed." loc. cit.

Discrimination in Admission to Union Membership

Although Congress and important business groups have shown repeated concern for the apparently nonexistent group of entrapped union members, they have shown little interest in what actually is a more prevalent and more important problem - the plight of those workers who cannot join unions of their choosing and who, as a result, may be limited in their employment opportunities. Many observers have pointed to the undemocratic consequences of such restrictions.

> Union practices pertaining to the admission and expulsion of members are the threshold to democracy in the government of labor organizations. An employee in a bargaining unit who is unfairly excluded from the union which represents the unit or who is unjustly expelled from membership has no opportunity to participate in fixing the terms and conditions of his employment. He is bound by the action of an organization in whose councils he has no voice. In his case it is a fraud to call collective bargaining an instrument of industrial democracy.[52]

It is in the area of admissions that the courts and government agencies have made the least progress. The democratizing role that unions have to play in industrial life is greatly limited as long as they bar Negroes from membership, although the unions, by law, are supposed to represent them. In 1944, in the Steele v. Louisville & N.R.R. case, the U.S. Supreme Court concluded that a union which enjoyed exclusive bargaining rights under the law had a corresponding obligation not to discriminate

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[52] Cox, "The Public Interest in Union Affairs," op. cit., p. 14.

unfairly among the workers it was supposed to represent, particularly on the "irrelevant and invidious" basis of race. However, the Court failed to insist that Negroes be admitted to membership in the union that was supposed to represent them. And it should be obvious that a union cannot and usually will not adequately represent non-members.[53]

At the same time that Negroes were excluded from membership in the railway unions, and consequently suffered the loss of their jobs and seniority rights, their attempts at forming their own organizations were stifled by the policy of the National Mediation Board of maintaining the "customary grouping of employees into crafts and classes as it has been established by accepted practice over a period of years."[54] Joseph L. Rauh, Jr., has concluded:

> I do not think it unfair to record here that the National Mediation Board has generally been on the side of discrimination and exclusion. Indeed, the 1941 Southeastern Conference Carriers Agreement, by which the railroads and the Brotherhood of Locomotive Firemen and Enginemen excluded Negro firemen from many jobs and which was outlawed by the Steele case, was actually mediated and countersigned by the National Mediation Board.[55]

The National Labor Relations Board has been similarly deficient in refusing "to act in the matter of racial exclusion."[56]

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[53] Aaron and Komaroff, op. cit., pp. 435-6.

[54] Ibid., p. 431.

[55] "Civil Rights and Liberties and Labor Unions," Labor Law Journal 8 (1957),

[56] Ibid.,

With regard to admission policies, the courts continue to adhere to the "voluntary association" conception of trade unionism.

> "It is a black-letter rule that no one has a legally protected right to become a member of a voluntary association. Consequently, a union may exclude an applicant for any reason, good or bad, or for no reason... Until recently, there was reason to hope that the courts might gradually change the rule applicable to labor unions... Unfortunately, the decision in Ross v. Ebert, and the Supreme Court's refusal to review the Cliphant case have discouraged, if not permanently foreclosed, this avenue of progress."[57]

The voluntary efforts of the labor movement to eliminate discrimination in its midst have been distressingly slow and inadequate, as the Labor Secretary of the NAACP has pointed out repeatedly. Again, the leaders of the AFL-CIO who are committed to progress in this area are prevented from taking action by the balance of forces and sentiments within the federation, and frequently within their own unions.

Despite the obvious need for federal legislation on admissions, and despite a willingness to legislate elaborately on other aspects of internal union government, all legislation, including the Labor-Management Reporting and Disclosure Act of 1959, is totally silent on the subject. "Congress...failed to provide new substantive law in the one field in which it was urgently needed - the admission of members."[58] The omission was not, certainly, a simple oversight. However, there is little likelihood

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[57] Cox, op. cit., p. 17-18.

[58] Ibid., p. 17

that Congress will deal with the issue since the trade unions oppose such measures out of their general objection to government regulation of their affairs, and southern Congressmen regard any attempt to ensure non-discriminatory admission to unions as a direct invitation to federal Fair Employment Practices legislation. It would be patently unreasonable (and ineffective) to insist that unions admit members without bias, without applying the same rule to employers in hiring practices.[59] The courts have not proved to be an appropriate remedy since the various decisions in favor of Negro rights generally have been ignored except in the specific cases taken up in court. Negroes have won every one of the court cases dealing with union membership and employment as firemen on the railroads since World War II, and yet the percentage of Negroes employed in firemen's jobs has declined greatly.

The struggle to eliminate racial or other forms of discrimination in union admission remains substantially in the hands of the Negroes and other supporters of civil rights. The recent organization by A. Philip Randolph of a nation-wide Negro trade union committee represents the Negro recognition that they will have to force open the doors of the recalcitrant section of the labor movement.[60]

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[59] Aaron and Komaroff, op. cit., p. 672.

[60] A detailed documented report of the grievances of the Negroes against white workers and organized labor may be found in an article by the Labor Secretary of the NAACP, Herbert Hill, "Labor Unions and the Negro," Commentary, 28 (1959), pp. 479-489. An implicit reply to Hill may be found in Harry Fleischman, "Labor and the Civil Rights Revolution," The New Leader, 43 (April 18, 1960), pp. 16-20; Hill replies in "Negro Union Rights," The New Leader, 43 (June 20, 1960), pp. 30-31; and Fleischman answers anew in "Negro Union Rights," The New Leader, 43 (August 15 and 22, 1960), pp. 30-31.

The Labor-Management Reporting and Disclosure Act of 1959

Perhaps the first legislative effort to directly affect the prospects for union democracy is the Labor-Management Reporting and Disclosure Act of 1959, written after extensive hearings by the McClellan Committee. While the Act has not been in effect long enough to permit an empirical analysis of its consequences for internal union government, something can be said about the likely consequences of the Act by analyzing its provisions in light of what we already know about the functioning of unions and the possibilities of legislation in this area.

1. Election Procedures

Fair and properly conducted elections are, of course, a fundamental aspect of democracy in any polity. An important part of the LMRDA is designed to encourage honest elections in which all points of view have an opportunity to campaign for office, and all members have the right to vote freely. Section 101(a)(1) of the new Act provides that every member shall have an equal right to vote; this is intended to eliminate second-class memberships without voting rights such as a number of unions have, and also to allow other often disenfranchised groups such as apprentices and employer-members to vote.

Title IV sets maximum terms of office for international (five years), locals (three years), and intermediate bodies (four years). It also provides for secret ballot of all officers, for proper notice to members before elections, for the rights of all members to campaign for candidates and to be eligible to run

for office. The rights of formal opposition are also protected by clauses which provide that unions must mail any candidate's campaign literature, at his request and expense, to the entire membership, and that any candidate has the right to inspect the union's mailing list before the election. The advantages incumbents have to use control of the organization are further restricted by the provision that no union funds derived from dues or assessments may be used to promote the candidacy of any nominee for office.

In seeking to promote democratic procedures, the authors of the Act also provided guarantees to members and potential opposition groups to engage in political activity outside the formal context of an election campaign. In so doing, they presumably recognized that an incumbent administration always operates, to some extent, as a political party, and that the formal guarantees of freedom at election time have little meaning unless opposition groups have the right to continuous existence. In effect, the Act seems to encourage factions.[61] The guarantees in the section

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[61] "Section 101(a)(2) carries the legal protection a step further by guaranteeing freedom of speech inside and outside union meetings, and also by securing the critics an opportunity to meet for the purpose of organizing their opposition. The latter privilege would seem essential to effective minorities even though it flies in the face of traditional trade union opposition to any form of caucus or separate assemblage. However, dissent in a union, like treason within a nation, can be lawfully suppressed if the purpose is to destroy the union or encourage a rival." Archibald Cox, op. cit., pp. 24-5.

on free speech and assembly are limited however, by the proviso that the union may adopt "reasonable rules as to the responsibility of every member toward the organization as an institution...," presumably designed to enable unions to protect themselves against crackpots or truly disloyal oppositions.[62]

In a number of places the Act recognizes the need for proper disciplinary procedures, but it seeks to prevent such discipline being meted out arbitrarily to members for exercise of their proper rights by outlawing disciplinary action that is in any way based on a union member's activities as a witness, as a political citizen communicating with government officials or legislators, and as a plaintiff who brings suit against the union.[63] It should prevent any future efforts to formally penalize union members for supporting measures opposed by unions, such as right-to-work legislation.[64] With regard to due process in disciplinary procedures, the LMRDA contains the following provisions:

> "No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization

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[62]LMRDA, Section 101(a)(2).

[63]LMRDA, Section 101(a)(4).

[64]Benjamin Aaron "The Labor Management Reporting and Disclosure Act of 1959," Harvard Law Review, 73 (1960), p. 874. In California in 1958, the International Association of Machinists expelled two members for supporting the right-to-work referendum proposal, and the courts upheld the right of the union to make such action. Cox, "The Public Interest in Internal Union Affairs," op. cit., pp. 34-5.

> or any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."[65]

Besides these provisions a number of other clauses bear closely on the problem of union democracy. The power of international unions to place locals under trusteeship, a power which has sometimes been used arbitrarily to prevent opposition, is extensively regulated. The sections which require unions to make detailed reports to the Secretary of Labor of their administrative regulations, their contracts, financial records, including all sums paid to individuals and which require union leaders to report all sources of income, union or other, may help considerably those union members or opposition factions who are interested in union affairs to watch more closely what their representatives are doing.

Many observers of the labor movement who agree that the objectives of the Act are worthy still question the extent to which they will actually change the decisive character of the labor movement as a one-party oligarchy, or even the extent to which they will improve the actual rights of the vast majority of union members who do not have special access to means of securing these rights. The main advantages available to incumbent union officers to retain office indefinitely and set policy as they see fit are not greatly restricted by sections of this or any other legislation, though they may help prevent outrageous behavior. Cox has pointed

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[65] LMRDA, Section 101(a)(5).

out some of these inherent administration advantages:

> Section 401(g) prohibits using union funds to promote the candidacy of any person. The administration of the latter provision will require delicate judgments. When a union president visits major locals on union business during the months before an election, he is not unmindful of his political fences. The international representative who goes to another city to handle grievances may be expected to discuss an impending election. The incumbents invariably command more space in the union newspaper than the opposition. Legislation can no more wipe out these advantages than it can prevent a President's dramatic move towards world peace from aiding his campaign for reelection. The statute should help to eliminate such grossly unfair tactics as hiring additional organizers to campaign for the reelection of incumbent officials or using the union treasury to send out election propaganda.[66]

That veteran of the labor wars, both internal and external, J.B.S. Hardman, has made a similar point in more vivid language:

> It is the crippling weakness of the new labor law that, while prescribing free traffic for dissenting opinion, it does not provide the means for advancing the views or interests of a dissenting member or group. There is a drastic disparity between the material and other resources at the disposal of an officer defending himself - and the union - and the sinews of war available to the individual member. The authors of LMRDA, nearly all lawyers, might have given this some thought, but they did not....[67]

Although gross abuses may be controlled, the advantages that honest incumbents of union offices enjoy in elections cannot be eliminated by law, for, most union leaders do not have to resort to stealing elections or other raw practices. In addition to all the assets inherent in the control of the organization machinery

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[66] Archibald Cox, op. cit., p. 21.

[67] "Labor Courts for Labor Democracy," The New Leader, January 25, 1960, pp. 20-22.

itself, the union leader "can rely on membership apathy or more subtle political maneuvering."[68] The law may well protect the union member against arbitrary power and violence, but cannot avail against the inherent strengths of a bureaucracy.

The Problem of Enforcement

The failure of the Law to face the facts of organizational life is revealed most clearly in its enforcement provisions, which are especially important in legislation affecting a generally underprivileged, uneducated, and expolitable group such as the blue-collar workers who form the bulk of union membership. Writing about the sections designed to protect union members against unjust expulsion, Archibald Cox points out that there are already many safeguards against this in court-developed common law, and that the real problem has not been the right law but, rather, means of enforcing the law-of efficiently bringing violators to court. As he says:

> No additional substantive law was required and none was created. The need was for a more practical remedy than suit by an individual employee. Congress failed to provide one.[69]

Similarly, J.B.S. Hardman asks: "Can a rank-and-file member really avail himself of the costly, cumbersome action which the law provides; can he afford to sue his union?"[70]

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[68] Strauss and Willner, op. cit., p. 522.

[69] Archibald Cox, op. cit., p. 17.

[70] J.B.S. Hardman, op. cit.,

Since the problem of enforcement is so crucial to any evaluation of the potentials of this or any other law to affect union democracy and internal due process, it seems appropriate to look more closely into the role of different agencies. A number of writers have pointed out various reasons why reliance on lawsuits is an inadequate method to deal with union afairs.

1. Workers are unfamiliar with the law and hesitate to become involved in legal proceedings.[71]

This can be traced to certain characteristics of the working class generally: they have less education than middle and upper class people and their norms include avoiding involvement with community authorities in general and with the law in particular.

It is well-accepted that better-educated people are more likely to be aware of their rights under the law, and to know lawyers personally, or to know where they can get a reliable lawyer; the second point is probably more important. It is difficult to secure legal protection for the most exploited classes because of the distrust and hostility with which they are prone to regard agencies that are established and operated by people with quite different backgrounds and values than their own. Even agencies established precisely for the protection or advantage of poorer and less educated peoples often are ineffective because of the suspicions and fears of the clients they seek to help.[72] It is true that the fault

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[71] Archibald Cox, op. cit., p. 28.

[72] See William F. Whyte, Street Corner Society, (Chicago: University of Chicago Press, 194) for an analysis of the way in which settlement houses in poor neighborhoods have faced hostility because they are viewed as middle-class agencies. An excellent discussion of the general hostility of workers to authority wielded by the middle-class world may be found in Katherine Archibald, Wartime Shipyard, (Berkeley: University of California Press, 1947), pp. 162-170.

often lies in the agencies themselves whose bureaucratic character thwarts their intended purposes, since the lower down one goes in the social system the less accustomed people are to fulfilling the seemingly meaningless formalities of bureaucracies. Perhaps even more important in accounting for the failure of the lower strata to claim their rights is that they are more likely to have been victims of injustice and exploitation, and hence less prone to become incensed about violations of rights as quickly as those in the middle-class. The identical enforcement clauses which might be quite effective in legislation dealing with the rights stockholders who as a class have ready access to legal advice, might be very ineffective as part of legislation enacted to protect union members.

2. Litigation is expensive. Court costs and lawyer's fees in a protracted suit can be enormous, and most union members cannot afford to go to court even if they are willing. For example:

> The plaintiff's counsel fees in Weber v. Marine Cooks and Stewards were set by the Court at $7,500 for the trial and one appeal, and there is no reason to believe that these were excessive. In that case, the court ordered the fees to be paid out of the union treasury, but usually the expense must be borne by the anti-administration plaintiffs themselves. Although information is not available as to counsel fees in the Hod Carrier cases, it is known that they were only finally paid ten years after the start of the litigation.[73]

The few lawyers who feel morally obligated to take on rank-and-file labor cases free of charge, cannot themselves afford to handle

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[73] Strauss and Willner, op. cit., p. 530.

very many at a time or in succession. The American Civil Liberties Union tends to be more interested in constitutional issues than in mundane trade union cases.[74]

Another adverse consideration is that the substantial costs involved in bringing a suit to court can rarely be recovered through litigation. Most internal union issues do not involve that kind of money.[75] Strauss and Willner point out that there are few "individual plaintiffs" who are not backed by a strong faction which has raised money from its members over a long period of time.

> Even then, unless the recovery of a large sum of money or the definite control of the union goes to the winner, a faction will hesitate to enter into litigation. It is a rare group of men that will undertake the many pressures and difficulties mentioned, merely to establish the principle of union democracy.[76]

One section of LMRDA makes a beginning of recognizing this problem since it authorizes any union member to bring a suit whenever his union refuses to sue an officer or employee alleged to be guilty of a breach of fiduciary obligations. The trial judge may allot part of any sums recovered for counsel fees and expenses. Cox indicates that these provisions are potentially among the most important in the Act. "If individual members have the initiative and interest to bring suit, the Becks, Hoffas, and Webers may be required to account for not only any misappropriations but also for all the profits which they have made by virtue of their offices."[77]

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[74] H. W. Benson, "Intellectuals and the Lonely Union Reformer," Liberation, 5 (April 1960), p. 15.

[75] Cox, op. cit., pp. 28-29.

[76] Strauss and Willner, op. cit., p. 530.

[77] Cox, op. cit., pp. 9-10.

Obviously, this will still be an effective incentive only if considerable sums are involved. In Australia after World War II concern arose both within conservative and labor circles about the unscrupulous tactics used by the Communist Party to maintain its control of the majority of the trade union movement. The Labor government at this time faced up to the problem of court costs by "amending the Federal Arbitration Act to provide for inquiry where there appeared to be a reasonable question of irregularity in union elections, [and] for payment of legal expenses of the plaintiff..."[78] James McClelland, a prominent Australian labor lawyer, notes in this connection:

> ...the Australian legislation has taken into account the fact that the availability of legal remedies is not of much use to a rank-and-file unionist if he can't afford the cost of pursuing those remedies. It has therefore provided that where, upon an inquiry, the court finds an irregularity has occurred in a union election, the attorney general may authorize payment by the government to the person who applied for an inquiry of the whole or part of his costs. Even if the court does not find an irregularity but certifies that the person who applied for the inquiry acted reasonably in so applying, the attorney general may still authorize payment of his costs by the government.[79]

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[78] James R. McClelland, "Experiences of the Australian Labor Movement under Governmental Control," in M. Harrington and P. Jacobs, eds., Labor in a Free Society (Berkeley and Los Angeles: University of California Press, 1959), p. 152-53. It should be noted that this legislation grew out of a situation in 1949 when a prominent defector from the Communist Party "told of widespread election frauds, and misuse of office and funds in Communist-run trade unions. An inquiry by a Royal Commission in Victoria led to further revelations of Communist Party trade union relations, fraud and corruption." Herbert E. Weiner, op. cit., pp. 404-5.

[79] McClelland, op. cit., p. 400-401.

3. In spite of developing standards, the courts (i.e., the judges) are not sufficiently familiar with union affairs to be able to make necessary distinctions between actions which do violate union democracy and those which do not. In the settlement of internal union disputes the courts rely heavily on the terms of the union constitution, the protection of procedural due process, the process, the protection of democratic process within the union, and "the personal virtuousness of the parties."[80] The union constitution however, is likely to be vague and contradictory; the standard of procedural due process, although the norms it applies are impersonal and fair, often imprecise, and the standards of democratic procedure, though just, are indefinite in practice. The standard of personal virtue or political purity is largely negative in its effects.[81]

4. "There is difficulty in obtaining adequate relief from the courts. Courts rarely give positive instructions but only negative commands which are easily by-passed."[82] The result is that court action may be entirely ineffective in a given case, or that essentially the same case may be brought into court repeatedly at considerable cost and inconvenience, with still no assurance of a satisfactory solution.

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[80]Clyde W. Summers, "Judicial Settlement of Internal Union Disputes," Buffalo Law Review, 7 (1958), p. 420.

[81]Ibid., p. 411-20.

[82]Strauss and Willner, op. cit., p. 531.

> Thus, in Weber v. Marine Cooks and Stewards, after the court had set aside the new constitution on the grounds that it was adopted in the wrong way, the union majority then proceeded to adopt the new constitution in the right way, and the bitter and expensive litigation was in that case a complete waste. Injunctions must necessarily be limited in scope. They cannot cover all future violations that may be anticipated... For the courts to make certain that their decisions are effective could involve visitorial powers on a scale quite incompatible with any present ideas of free unionism.[83]

In a country that shows relatively little respect for the law, this limitation of the courts represents an enormous problem for the legal protection of union democracy. In a country like England, a single court decision is sufficient to establish the basis for appropriate future action. In this country, clear-cut court decisions are not always honored as precedents for future action by persons outside of the specific suit.

5. The exhaustion of remedies doctrine, a necessary rule perhaps, can often mean that a case takes three or four years.[84] This delay can be extended when a judgement is challenged several times, which frequently occurs. Cost and delay are on the side of the wealthier party, so that individual union members are at a sharp disadvantage in sueing to protect their rights.[85] However,

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[83] loc. cit.

[84] ibid, p. 530

[85] Archibald Cox, "The Rule of Law in Preserving Union Democracy," op. cit., pp. 614-615.

the courts have developed numerous exceptions to the exhaustion-of-remedies rule,[86] and the LMRDA provisions setting limits on the time a union member must spend in internal appeals[87] will probably serve to minimize the delays imposed by the courts.

Two of the titles in the new law, those concerning elections and trusteeships, are enforceable by the Secretary of Labor upon complaint of a union member. If the Secretary upon investigation determines that a violation has occurred, he is to bring civil action on behalf of the plaintiff in the district court. If the court declares an election invalid, the Secretary is to supervise the conduct of a new election.

Obviously, these enforcement provisions go a long way toward eliminating the kinds of objections discussed above. However, the "Bill of Rights for Union Members" in the LMRDA which are designed to protect the rights of opposition groups, still are enforceable only by the courts .

The concentration of enforcement power in the hands of the Secretary of Labor has some important liabilities. Benjamin Aaron has pointed out that under the new law the Secretary of Labor is given considerable discretion as to the selection of the complaints he will pursue. Because he is likely to be susceptible to various political pressures brought to bear on him, including pressures from officials of large and important unions whose

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[86]Clyde W. Summers, op. cit., pp. 409-10.

[87]Section 101(a)(4); Section 402(a).

cooperation he needs. The result may be that the complaints against some unions will not be processed vigorously and complaints against others will be given more serious attention. As Aaron notes:

> ...the general suppression of grass-roots democracy may come from the outside. The LMRDA invests tremendous authority over the conduct of internal union affairs in the Secretary of Labor. No countervailing power is directly opposed to many of the decisions he may be called upon to make. It seems likely that the most critical of these will concern not individuals, but factions, not one or two men against "the machine," but the "outs" against the "ins." The considerations affecting such decisions, as well as the decisions themselves, will involve more than simple determination of facts; the Secretary will be compelled, indirectly if not directly, to decide far broader issues than those ostensibly presented for resolution.[88]

The first suit filed by the Secretary of Labor to void an election suggests that these fears may be warranted. The suit was directed against a small unaffiliated union, the Independent Petroleum Workers Union of Bayway which represents employees at one Esso Standard Oil Refinery. It charges possible misuse of the integrity of the ballot box by the administration which, among other things, had access to the ballots "before the arrival of rival observors of the losing candidates and prior to the agreed time for the collection of ballots."[89] Government action against a small independent union that is sometimes charged with being a "company union" by its AFL-CIO rival clearly will not outrage AFL-CIO

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[88]Benjamin Aaron, op. cit., p. 907.

[89]See "First Suit Filed Under Labor Act," New York Times, July 29, 1960, p. 5.

leadership, and demonstrates in a Presidential election year that the Labor Department is enforcing the Act.

Potential Effects of Legislation

What have been the observable effects of the new labor law? It is too early to report any reliable conclusions as to whether the Act will have any important effects on the nature of union government. The impressions of labor journalists in touch with the situation in different parts of the country suggest that the LMRDA has not affected the tenure of union officers either on the local or national level. Some people closely connected with the collective bargaining process, particularly arbitrators, have expressed fears that increased responsiveness on the part of union leadership to the members' demands, brought about by the new law will result in greater union irresponsibility and intransigeance at the bargaining table. Benjamin Aaron has predicted that the LMRDA will result in "vigorous pursuit of collective bargaining demands formulated by local majorities, without regard to the broader aims of the national organization."[90] And William H. Smith, Executive Vice President of the Federated Employers of San Francisco, reports from his experience concerning the impact of the Bill of Rights provisions of the new law:

> Individual union members feel more free to criticize their leaders and are doing so. We know that local union leaders are being much more

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[90] "The Labor-Management Reporting and Disclosure Act of 1959," op. cit., p. 906.

> careful in their handling of union affairs and in their conduct of meetings. This has had its consequences for our bargaining. Union bargaining demands are more lengthy and more detailed. There is something for everyone in the list of proposals today. Union officials do more consulting with their membership during the bargaining, and they have less freedom and less leeway for compromise with the employer. Union representatives who are not secure in their jobs and who do not enjoy strong support of their membership are often reluctant to take the responsibility for agreeing to anything less that the original demands. There is much referring of counter-proposals to the membership for action. There is a greater use of union committees to spread the risk of unfavorable reaction by rank and file to counter-proposals and to a final settlement which is short of the original demands.
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> Where there is a lack of strong and secure union leadership backed by the rank and file, the employer finds his bargaining much more difficult and time-consuming. With lack of leadership and responsibility for reaching a reasonable compromise, unions find themselves involved now more often in strike situations that before...[91]

But while there can be little doubt that the new law and the current climate of opinion encouraging union democracy may have some effect in making unions more responsive to the wishes of their membership, and hence perhaps more beligerant in their bargaining tactics, I would like to reiterate the point made earlier that there is no reliable evidence that the tactics of oligarchic unions are preferable from the point of view of the larger polity. In a recent review of the causes for the growth of a "certain degree

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[91] "Current Trends in Collective Bargaining," in Current Trends in Collective Bargaining, (Berkeley: Institute of Industrial Relations, University of California, May 11, 1960), p. 18.

of rebelliousness and non-conformity within the labor movement that we did not see even as recently as five years ago," David Cole, perhaps the leading labor mediator in the United States, attributes the growing number of incidents in which local unions or rank and file members drastically repudiated agreements made or advocated by their international leaders to "a form of anti-colonialism." He points out that with the inevitable development of industry-wide bargaining "the local people... play a lesser and lesser part" in the affairs of the union. And this decline in function leads to a "feeling of frustration. ...[and a consequent readiness to] latch on to causes in order to use this power which they have." In other words, Mr. Cole reports from his widespread experience that it is the decline in democracy - a decline which he thinks was necessary and inevitable - that has resulted in a decrease in union responsibility.[92]

Though action in the form of enacted law and juridically protected guarantees may seem relatively ineffective in enhancing the prospects for real union democracy their importance should not be underestimated. For the significance of a law does not necessarily lie in the extent to which it is obeyed; One of its major functions is to set a moral code or standard which society considers proper but whose parts can be violated within certain limits. If most people commit adultery occasionally - as Kinsey has demonstrated - this does not have much effect on family stability,

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[92]David L. Cole, "Where we are and Where we are Going in Collective Bargaining," in Ibid, pp. 2-3

but if everyone feels free to commit adultery whenever he wishes, the family system as we know it would not exist. This restraint function is recognized in the area of race relations where the passage of even inadequate Fair Employment Practices Acts with weak enforcement provisions, does reduce discriminatory practices and does force those who violate the law in secret to announce their conformity in public. People may engage in illegal or immoral actions, but the fact that they know these actions are illegal reduces the extent to which they occur, even if violators are rarely prosecuted.

It is important to recognize, therefore, that the function of labor legislation may not be as much to create viable laws that can be used "against" unions, as to set moral standards in an area of institutional behavior that previously was outside the realm of explicit moral standards. The exposes of various odious practices within unions, and the laws enacted by different legislative bodies have undoubtedly affected the behavior of union leaders. A dictatorial union leader is now less likely to take punitive actions that are clearly unnecessary against his internal political opposition. He probably will become more sensitive to membership opinions in the many areas in which better service to membership demands is easy to supply and does not interfere with any of his basic concerns. The fact that men know the law is on their side will give courage to some who previously felt inhibited in standing up for their rights. The "good" unions may also feel safe and concerned enough over the general reputation of the movement to

enlarge the scope of internal review boards, and thus further due process.

The Role of Opposition

Historically, the most important factor in the achievement and defense of individual rights and democracy has been the existence of organized groups that actively demand representation in government and greater equality in society. In most cases, legislation protecting the rights of individuals and extending their freedom would not have been passed, except for the continual activities of some organized group representing those interests. Public opinion, in part, is formed through the activities and propaganda of such groups, as well as in the resultant legislation. Even after appropriate protective laws have been passed, organized groups are necessary to provide moral support for those individuals whose legal rights have been transgressed and to pay the costs of litigation. The area of civil rights serves as an example: Fair Employment Practices and other civil rights legislation were passed only after years of intense effort by voluntary groups concerned with improving the position of Negroes in society. In the states where such legislation is in effect, these groups now bear the burden of seeing that adherence to the law is maintained.

Within the larger polity unions have formed a "second party" opposing the party of industry to secure various rights for workers. Through their collective strength, unions wrested from employers such employee rights as job security and control over working conditions. Simultaneously, the unions appealed to and

formulated public opinion concerning the need to protect workers from the arbitrary power of employers. This culminated in legislation which assured the unions a legitimate and established place as the opposition within industry.

The same general rule that the rights of the members of a polity are only safeguarded in the context of a struggle among diverse organized groups holds true within unions as well as within industry and society as a whole. Whether or not opposition candidates are actually elected to union office, the very existence of an organized opposition exerts pressure upon the incumbents to be more responsive to the membership. This is not to say that a union administration does not have formidable weapons against such opposition groups -- it does; but without such groups, however weak their position within the union, civil liberties within union's remain precarious and the rights of individual members lack their most effective source of defense.

Many students of the labor movement have effectively argued that unions may be considered democratic institutions, that is organizations which accurately represent the interests of their members and maintain the basic political freedoms internally, without the presence of formal internal opposition. But there can be little question that such a situation necessarily means that these rights are unstable, that they may be undermined and ignored in situations of crisis. Hugh Clegg who strongly urges that unions without opposition groups may maintain "freedom of speech and association, freedom from arbitrary decisions, and so on" recognizes

that he is promulgating a "paradox...of authoritarian policy decisions together with the protection of members' rights within the union... a paradox of rights without parties."

In his native country England, Clegg sees these rights protected by two main factors: one, specific British union political institutions, particularly the practice of lay executive committees (men who work full time at their trade) who though relatively weak as compared with the full time officers still can play an important role in protecting liberties within the union; and second, "the traditions of public life in Britain [which] reduce the likelihood of gross corruption and misuse of power in British trade unions."[93] Another British authority on trade unions V.L. Allen, who agrees with Clegg that the existence of opposition is not a basic criterion of union democracy, suggests however, that the only guarantee that democratic rights will endure is practices which assure that the "penalty for inefficiency, the misuse of resources or the abuse of power is severe... The voluntary nature of trade unions provides such a penalty. A trade-union leader who is in continual fear of losing his members will inevitably take steps to satisfy their wants."[94] Clark Kerr, writing about American unions, takes the position that "one-party...unions may be and are

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[93] Hugh A. Clegg, "The Rights of British Trade-Union Members," in Michael Harrington and Paul Jacobs, eds., Labor in a Free Society, (Berkeley: University of California Press, 1960), pp. 135-138.

[94] V. L. Allen, op. cit., pp. 63-64.

'democratic;' suggests, however, that in the long run they will only retain their democratic character if they are "under the proper pressures." These pressures according to Kerr have historically had four sources, voluntary membership, dual unionism, a "more or less permanent faction, stopping short of a second party but hovering in the wings ready to rush out on any inappropriate occasion, such as was once provided by the Socialists," and employers who have been willing to challenge the union's basic policies.[95]

It would be difficult to challenge the thesis that an organization may be democratic, that its members may have access to the decision-making process, without institutionalized opposition and competitive elections. But conversely fit is equally difficult to deny that concentration of power without opposition always carries with it the potential for serious abuse. And since trade unions have more power over their members than most other private governments, and less educated lower status individuals are much less prone to exercise their political rights than the more privileged strata, the fact of the absence of opposition cannot be lightly dismissed. The institutions, values, and practices,

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[95] Clark Kerr, Unions and Union Leaders of Their Own Choosing, op. cit., pp. 13-15. Kerr suggests that to make up for the decline of the four now mainly historic sources of union democracy that efforts be made to enhance six aspects, membership interest, "professional" leaders with a professional ethic, a new faith for the union movement, local autonomy, union decertification, and discharge of leaders through rebellion. See pp. 15-19.

which Clegg, Allen, and Kerr, see as protecting democratic rights in Britain, or in the past of American unions, do not exist for most American unions today. Kerr explicitly notes that his four conditions have almost completely vanished. There is clearly some need to at least guarantee the "right of rebellion" within one-party unions, or as Kerr calls it the "right of competitive discharge", that when leaders abuse power or otherwise manifestly fail in their leadership role that a "minimum of democratic machinery is available" to replace them. Efforts to enhance the democratic potential of union government therefore, must be consciously concerned with protecting the rights of potential opposition groupings.

Because the backing for American legislation affecting internal union affairs has generally come from people with an individualistic, if not an anti-union bias, it has never even attempted to deal directly with the rights of such opposition groups until the passage of the LMRDA. And the most recent legislation is really only a preliminary start in this direction which does not approach the provisions of Australian law on the subject. American legislators tend to see union democracy chiefly as a way of protecting individual members from the abuses of autocratic leadership; this emphasis could not but divert their attention from the social processes which alone can make union democracy meaningful.

Although legislation can provide a framework for democratic functioning, it cannot alter the determining structural conditions of political participation which vary tremendously from union to union -- the mechanisms of its relations with employers or the peculiarities of the occupations it represents, for example.

It cannot assure that union members will actually take advantage of the formal framework it has established; it cannot make members more interested in union affairs, nor can it create opposition groups which will utilize the democratic machinery. Opposition groups cannot be artificially erected; their existence depends on sources of disagreement within unions which can provide a basis for different policies, as well as a climate in which members of similar economic interests and similar views on union affairs can get together. Legislation, then, once it accepts the rights of opposite groups, can only assure the mechanics by which such bodies can express themselves within the union.

The effectiveness of opposition groups in improving democratic procedure and due process is evident even in the two efforts referred to earlier in which success was achieved by institutional means: the Australian legislation dealing with union government and elections, which has good enforcement clauses, and the Public Review Board of the United Auto Workers. In Australia there was a well organized and coherent opposition to the dominant Communist trade union leadership in the form of "Industrial Groups" established originally by Catholics within the Australian Labor party. A brief description of the way they functioned and their effect is relevant:

> ...the ALP Industrial Groups...provided imaginative leaders, some of them former Communists, and established their own publicity media to break the monopoly of the Communists on the trade-union press in many industries. They constantly harassed and exposed Communist officials in trade unions, keeping them off balance... The "Groupers" made

> use of the arbitration court "clean ballot" legislation to get an honest count and roused the trade-union membership to a pitch which resulted in some of the largest total ballots recorded in the history of these unions.[96]

Similarly, a recent study of the operation of the Public Review Board, which points out that 39 individuals have appealed to the Board against the union leadership, nevertheless concludes "that Review works best where there is conflict within a democratic local framework."

> Under such conditions, the awareness of the rights guaranteed by the Board reaches a larger section of the rank and file; the individual who has a grievance always has a union political to whom he can turn for advice and help in prosecuting his appeal; and any financial question that might inhibit access to the Review mechanism can be solved on a group basis. In such a situation, Review acts to strengthen democratic tendencies which already exist, and to establish a rule of law for any struggle which will take place within the local. Here, the gain from Public Review is at its maximum and most obvious.[97]

Does Opposition Weaken Unions?

Many who would like to see an extension of democracy and due process within the labor movement nevertheless oppose efforts to legitimatize factionalism or formalized opposition party rights within unions. They contend that the union, as an organization in constant conflict with a powerful business opponent, cannot afford the luxury of internal dissension. The problem was well put over three decades ago by A. J. Muste:

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[96] Weiner, op. cit., p. 408.

[97] Michael Harrington, "UAW Public Review Board" (to be published by the Fund for the Republic) p. 16.

> In the first place the trade union seeks to combine within itself two extremely divergent types of social structure, that of an army and that of a democratic town meeting... It must develop something of the solidarity, discipline, and capacity for swift striking that an army has... The impossible is demanded of the union and its leadership...[98]

The argument that internal factionalism necessarily weakens trade-unionism actually is not as cogent as it seems. In fact, the period with the most internal opposition in the life of most labor organizations has usually been when they were at their weakest, in the phase of early organization before employers accept them as a legitimate part of the industrial relations system. The United Auto Workers experienced a series of bitter factional fights at the same time that it was trying to organize the "big three" of the industry. Along with the achievement of greater strength vis-a-vis the external enemy, the auto companies, went tighter control of the organization by the union administration. A similar story may be told concerning most other labor unions. (It may be noted that in the Soviet Union, which also once justified a one-party monopoly of power on the basis of a need for unity against powerful capitalist encirclement, there was much more freedom

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[98] "Factional Fights in Trade Unions," in J. B. S. Hardman, ed., American Labor Dynamics (New York: Harcourt, Brace, 1928), pp. 332-334. For recent statements along the same lines, see William M. Leiserson, American Trade Union Democracy (New York: Columbia University Press, 1959), pp. 69-70, and Philip Taft, The Structure and Government of Labor Unions, op. cit., p. 239, Arthur Goldberg, "A Trade-Union Point of View," in Harrington and Jacobs, eds., op. cit., pp. 109-111.

and opposition rights while the capitalist threat was a real one in the form of foreign and White Guard armies on Russian soil. The Communist party did not formally establish its monopoly of political expression until after it had expelled its military opponents.)

It may even be argued that regularized opposition strengthens, rather than weakens, the loyalty of members to unions. Thus it has been noted that in the International Typographical Union, which for over half a century has had an institutionalized two-party system in which turnover in office can and does occur, "it becomes possible and even necessary to distinguish between the current officeholders and the organization as a whole... The two-party system serves to deflect discontent among members and opposition leaders away from the union itself and toward the party in power.[99] Discontented members will say that the particular set of officers is no good, but that the union is wonderful. Similar reactions to internal conflict are reported in a study of four union locals in the United Rubber Workers and the United Auto Workers. The local with the most factionalism was also characterized by a high degree of loyalty on the part of its members.[100]

More recently, the steel strike of 1959 occurred in a union which had considerable factionalism and membership discontent with its officials. Interviews conducted with steelworkers during

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[99] Lipset, Trow, and Coleman, op. cit., p. 269.

[100] Arnold S. Tannenbaum and Robert Kahn, Participation in Union Locals (Evanston: Row, Peterson and Co., 1958), pp. 183-184.

this strike indicated that many remained hostile to the McDonald leadership but were aggressively loyal to the union, and so supported the strike. It may, in fact, be argued that where incumbent officers follow the more common pattern of competely identifying the organization with themselves, they potentially undermine loyalty to the union since any discontent with the leadership is interpreted as, and often of necessity becomes, an attack on the organization.

A second argument with which many labor leaders justify repression of opposition may also be challenged: the notion that unions are still on the defensive within a business-dominated society. While this paper is not the place to present the data supporting the thesis that unions are now an institutionalized part of the American polity, it is worth noting that there is much evidence to this effect.[101]

With few exceptions, the major American corporations accept the legitimacy of the trade union in their industry. They will still fight it with regard to normal issues of collective bargaining, but they no longer engage in activities designed to eliminate unions. As powerful an industry as steel failed in its major objectives in the 1959 strike. Though conservative legislators are

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[101] See Clark Kerr, op. cit., pp. 4-5; Arthur Goldberg sharply challenges this thesis, op. cit., pp. 106-108.

able to pass anti-union legislation, on the whole there is general agreement that none of this legislation has affected the position of established unions, although they have made new organization more difficult.

As far as can be judged, the majority of the electorate believe unions play a positive role in the society. In 1958, the voters in the five industrial states that balloted on "right-to-work" legislation turned it down by large majorities, and elected legislators and other state officials committed to opposing such measures. The most recent survey of public opinion concerning the relative power of labor and business indicates that sympathy for labor is stronger than for big business: thus 43 per cent believe that business has more power than labor in determining the "laws passed in this country," as compared with 34 per cent who believe that labor is stronger, most people, when asked which group should have more power, refuse to differentiate. However, a larger group (29 per cent) favored labor influence than welcomed business influence (14 per cent).[102]

A look at survey data on public opinion trends between 1945 and 1959 indicates that, in spite of all the exposes, the existing widespread support for unions has not declined. In a national survey conducted at the end of 1958, the Opinion Research Corporation found that 74 per cent of its sample approved of the "law that guarantees workers the right to form unions and bargain with their

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[102] "Many Feel Big Business More Influential Than Labor Today," Release of the American Institute of Public Opinion, May 13, 1960.

employers," while only 11 per cent disapproved. The proportion of the public approving of such a law has varied between 72 and 77 per cent for well over a decade. Similarly, when asked whether they thought most companies have to be forced to pay higher wages, 56 per cent of the 1958 sample replied yes, and only 31 per cent believed that most companies would raise wages voluntarily. Again, every poll in this series between 1944 and 1958 shows that many more people believe outside pressure is necessary to make companies raise wages, than believe they will do it voluntarily.

On the other hand, it should be noted that a large majority (60 per cent) of those interviewed in 1958 thought unions should be regulated "pretty closely," while 19 per cent felt that little or no regulation was necessary. Again, surprisingly, in view of all the charges of corruption in unions, the proportion of the public favoring regulation has remained more or less constant since 1949, when the question was first asked.

Union members were actually more likely to favor government regulation (68 per cent) than were non-union manual workers (60 per cent) or white collar workers (56 per cent). A breakdown of answers suggests that a sizeable proportion of these union members were concerned about corruption or mishandling of union funds (28 per cent), as compared with only 8 per cent who mentioned matters pertaining to democratic union government.[103]

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[103]Data cited here are from a report by the Opinion Research Corporation, Labor's 1959 Bid for Power (Princeton: January 1949).

Even if union leaders were to accept the idea that internal conflict does not necessarily weaken their organizations, and that the existence of the labor movement is not in jeopardy, the fact remains that anything which encourages internal opposition does weaken their personal security, and union officers, no more than others, can be expected to endanger the source of their own authority and status. The political assets that every union administration possesses by virtue of controlling the official machinery (such as its near monopoly of internal communications and political skills, discussed earlier) make it unlikely that regularized opposition can develop. There is even reason to believe that most changes in the position of the trade union movement have operated to reduce rather than to increase the potential for such opposition groups.

The Potential for Internal Opposition

The stabilization of the position of trade unions, particularly in their relations with management, and the decline of radical political doctrines, has reduced the number of situations that serve to increase membership interest in the organization and permit men outside; of the established leadership to gain a hearing. In stable and secure unions in which major crises are rare, there are few opportunities for aspirants to power to find any way of challenging the union leadership... The decline of the left-wing political ideology which characterized many American union leaders of the early organization period of both the AFL and the CIO flowed in large part from the institutionalization of labor organizations, and

to some degree from the weakness of the Socialist party as a force in the larger society.

In general, the more politically involved a trade union movement is, the greater the likelihood of internal factionalism. The commitment, for example, to support a socialist party or general socialist objectives necessarily involves some commitment to accept discussion of differences in politics as legitimate.[104] Many British trade union conventions have spent considerable time discussing both economic and more general political issues stemming from differences within the Labor party. Conversely, the stress on business unionism in the American labor movement has served to reduce the possibility for internal union disputes to emerge out of differences in value orientation.

Various changes in the social situation of American workers also operate to weaken the forces making for membership participation in trade unions. In the past workers often were tied to their unions by the fact that they lived in occupational communities, and so were involved in a variety of off-the-job social relations with other workers. Such relations emerged in industries in which workers lived close to one another for a variety of reasons, such

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[104]The Communists, on the other hand, have contributed to a breakdown in democratic procedures and due process. The fact that Communists are agents of a foreign power and often use unscrupulous tactics in gaining or retaining power within unions has been used by their opponents as a justification for comparable methods. A totalitarian opposition by definition can never be a legitimate opposition and hence by its very existence undermines democratic "rule of the game."

as the existence of one-industry communities, or had the need to live close to the job because of bad transportation facilities or were required to show up for jobs on different shifts.[105] The growth of metropolitan areas improved transportation, shorter work weeks, and higher incomes, have lessened their dependency on each other. More and more workers live in suburbs and occupationally heterogeneous neighborhoods, and with the removal of their former social ties to their occupations, comes a similar decline in their ties to the union. These changes have consequences for union democracy, for when membership participation, in unions decline, it is more difficult for a potential opposition to win strength.

Changes in the economy resulting in greater bureaucratization and centralization of authority in industry have also played a role in reducing the possibilities for enduring opposition within unions since they press labor organizations to centralize decisions and authority in an enlarged national office. The effective decision-making is taken away from the membership, and the more complicated such decisions become, the less likelihood there is that members can be induced to become involved in union politics, and to listen to or support opposition.

Another emerging pattern that also serves to reduce this potential is the tendency many unions, even craft unions, have to become "general unions," that is, unions which include a large

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[105] For a discussion of the role of the occupational community see Lipset, Trow, and Coleman, op. cit., pp.

variety of different crafts and industries. The industrial unions of the old CIO led the way in this direction, but they have been followed by many unions which seemingly remained loyal to the craft ideology.[106] The Carpenters' Union for example, has taken as its jurisdiction not only work made of wood, which includes diverse industries, but all commodities that once were made of wood or that would have been made of wood if different materials had not been developed. The proclivities of the Teamsters, the largest union in the country, to organize any firm which uses trucks, are well known. And it may be argued, the more heterogeneous the constiuency of a union, the fewer possibilities there are for maintaining internal democracy.

The growth of the general union increases the possibility that internal conflicts will develop among internal union groups composed of members with similar skills or occupations.[107] They

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[106] For a detailed statistical breakdown of this tendency toward the growth of general unions see Neil W. Chamberlain, "The Structure of Bargaining Units in the United States," Industrial and Labor Relations Review, 10 (1956), pp. 3-25. Some of the consequences of these changes are elaborated in Mark. L. Kahn, "Contemporary Structural Changes in Organized Labor," The Proceedings of the Tenth Annual Meeting of the Industrial Relations Research Association, (New York, September 1957), pp. 171-179.

[107] Clegg suggests that he also feels the "danger of authoritarianism" is greatest in the general unions. op. cit., p. 134. The two big general unions, the Transport and General Workers Union and the National Union of General and Municipal Workers are the unions which are best known to him as those likely to "discipline factions or leaders of factions." The situations which he describes as examples of such behavior were occasioned by specific occupational groups such as the busmen or the dockers acting on their own. See pp. 126-127.

will quarrel over whether each group's special economic interests are being adequately promoted by the union as a whole. Unions which include members with a wide range of skill levels, such as the UAW and the IAM, have already experienced this kind of conflict. But such conflicts of interests cannot be resolved simply by a democratic vote, as these unions have found. The interest group which is in a numerical minority within the union must feel that it can expect fair treatment, or it may become disloyal. Such conflicts are more likely to be resolved by arbitration, which within a union takes the form of a decision from above, by the administration, rather than by a majority vote.

Union opposition groups can endure only if, like political parties in the nation state, they can appeal to the body politic in terms of general value differences, as well as to interests. Such differences are the meat of disagreement within relatively homogeneous unions such as the International Typographical Union, or the American Newspaper Guild. Thus any trend, like that toward general unionism, which reduces the potency of disagreements flowing from varying values, and increases the possibility that the interests of different occupational or skill groups will become the basis for factional differance, serves ultimately to weaken the democratic potential of American unionism.

While most of the on-going changes in the internal as well as the external situation of trade unions would seem to operate against the enlargement of opposition rights, there is one important trend that may have different consequences. As a result of the increase in the educational attainments of the American population

and the decline in the proportion of unskilled and semi-skilled jobs in the economy, American union members are becoming both better educated and achieving higher status. Both education and status are associated with a heightened concern for democratic rights and due process, as well as adherence to conventional morality with regard to matters such as corrupt practices.[108] Insofar as American unionists are incorporated socially into the "middle class", either as well-paid blue collar workers, or as part of the growing white collar group, they will resent behavior which, in the eyes of their friends and neighbors, demeans trade-union membership. The way in which these values operate may be illustrated by the active opposition of some milk drivers' locals to James Hoffa in the Teamsters' Union. An official of one such local accounted for this as follows:

> Our members deliver milk bottles to middle-class homes. Most of them come into day-to-day contact with the women on their routes. Whenever the papers describe how Beck or Hoffa are in cahoots with racketeers, or how various Teamster officials are taking money, our men come into the local and want to know what the hell is going on. Some woman on the route asked them what they were doing in a crooked union, or why they put up with Beck or Hoffa. The over-the-road men or those delivering to warehouses within the city couldn't care less about the exposes. As far as they are concerned, Jimmy delivers the goods for which he is paid, and most other workers they meet think they are lucky to be in as aggressive a union as the Teamsters. It's middle-class morality that gets the milk drivers down.

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[108] See Lipset, Political Man, op. cit., pp.

Whether "middle class" morality will help create organized pressure within labor against violations of that morality is a moot question, given all the other forces operating to strengthen administration authority. As unions have become a legitimate major American institution, however, the general community status and social position of union leaders have been increasingly improved. They live in middle-class suburbs. Their wives and children mingle with people of diverse backgrounds and anything which makes the union movement look bad hurts their social position.[109] These social pressures on both members and leaders serve to reinforce the need for union officials to adhere as closely to due process and membership civil liberties, regulated by legislation, as is compatible with their own political security.

Conclusions

This paper has been restricted to a discussion of forces affecting trade union government within the labor movement itself, and to regulatory legislation. The entire analysis has been based on the premise that systems of power require some countervailing force to prevent them from becoming absolute and hence, in

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[109] For discussion of the social pressures on trade union officials, see A. A. Imberman, "Labor Leaders and Society," Harvard Business Review, 28 (1950), pp. 52-60; Orme W. Phelps, "Community Recognition of Union Leaders," Industrial and Labor Relations Review, 7 (1954), pp. 419-33; Alvin W. Gouldner, "Attitudes of 'Progressive' Trade Union Leaders" in Logan Wilson and William L. Kolb, eds. Sociological Analysis (New York: Harcourt Brace, 1949), pp. 575-79.

conformity to Lord Acton's famous dictum, absolutely corrupting. Since there are evident limits to the possibilities for institutionalizing opposition from within, and government control from without has important liabilities, it should be incumbent on all those concerned with the viability of the trade union movement as a progressive and democratic force to search out other possible forces. One group which has played an important role in structuring the environment of the labor movement has been the intellectual community, including concerned professionals such as labor lawyers.

As indicated earlier, American intellectuals have been overwhelmingly liberal and pro-labor in their political sympathies.[110] Their opinion magazines, books, and organizations are, on the whole, decisively on the side of unions. Although the liberal intellectuals, have criticized the labor movement for not living up to their expectations of its external role in society, they have tended to ignore the seamier aspects of the internal life of the unions in their public political activities. Because trade unions are a powerful ally for liberal political causes, and have more money and votes than any other single group on the liberal side of the fence, the intellectuals, who usually see themselves as weak and ineffective, regard organized labor as an ally to be wooed and propitiated, not as an institution deserving serious criticism of its internal affairs.

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[110] See page , supra.

Among intellectuals those concerned with trade unions as an academic field of inquiry particularly share this disdain to publically criticize the house of labor. This reluctance, in large part, stems from the fact that such scholars are usually "friends of labor" whose interest in the field has often emerged out of their political or economic sympathies. In addition, however, it must be pointed out that some of them have a vested interest in remaining friendly with union leaders, since the latter are potentially or actually a source of data, and also even of income for those among the professors who act as arbitrators.[111] Some labor lawyers, too, tend to be defensive about undemocratic procedures within trade unions for similar reasons.

As a liberal intellectual who strongly believes that a strong trade union movement is vital both for its members and for a healthy American democracy, I must urge also that the intellectual friends of labor have an obligation to help develop voluntary, external countervailing forces to internal union power. Specifically, this could be a legal defense organization on the lines of the American Civil Liberties Union or the Workers Defense League, which investigates charges concerning violation of civil liberties and due process within unions, and which provides for counsel's

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[111]Similar criticisms may be addressed to many professors, particularly in business schools, who derive considerable income and research date from management. This paper, however, is about unions and therefore I shall not discuss the other side of the question.

fees for union members. Such groups, together with individuals, should also be ready to expose violations of basic rights, much as Paul Jacobs did in his Reporter articles on the internal affairs of the Teamsters and on the expulsion of oppositionists from a Chicago local of the International Association of Machinists.

But in the long run, the best procedure would be the institutionalization of juridical guarantees of due process within labor itself. The Public Review Board of the UAW is, of course, a major step in this direction. Other unions should be encouraged to set up similar boards with real, independent powers to investigate and act. Here legislation can play a role which Congress has so far ignored. Regulatory legislation should provide that unions which set up viable internal institutions to carry out the objectives of the Act will be excused from complying with specific government regulations.[112] Such provisions, giving private groups the right to fulfill public objectives by their own action, have been enacted in other connections with regard to business and professional groups. In addition to dealing with international unions, legislation could provide that where a federation, like the AFL-CIO, has set up provisions to protect membership and group rights within its affiliates, the entire federation would be freed from the specific requirements. Whether unions will ever be willing to yield such power to the federation is a moot question, but if they really prefer to retain their freedom from governmental

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[112] Archibald Cox, "The Role of Law in Preserving Union Democracy," op. cit., p. 623.

control, such provisions would give them an opportunity to demonstrate the efficacy of self-regulation.[113] There seems to be little doubt that great power and high status within labor are accompanied by concern for the respect of the community, and even more important, an enhanced awareness of the potential of the labor movement to influence the larger society. Actions which may appear proper or necessary at the lower echelon will often be condemned at the top in most organizations. The problem is how to make the good sense of the heads of a bureaucracy prevail over the myriad of petty concerns operative near the bottom. The Public Review Board, or internal courts, are means which give top administration an opportunity to enforce its standards of proper behavior.

There are a number of conclusions which seem to flow from a look at the internal polity of American unions, at their relationship to the courts and labor agencies, and at their appropriate function as collective bargaining agencies, guaranteeing workers'

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[113] In this connection it may be noted that eight British unions provide for "outside arbitration as a last resort" in the appeal process over a discipline case. In Sweden all "union members have the right to appeal from disciplinary action (including recommendation for expulsion) to arbitration." The system is not completely outside arbitration, since if the four arbitrators designated by the disputing parties cannot agree on the fifth member who is also the chairman, he is designated by the national officers. In most cases, however, the general counsel of the Federation of Labor has been chosen as the chairman, though there is now considerable sentiment to give this role to an outsider, the chairman of the Labor Court, in the future. (See Walter Galenson, op. cit., pp. 80, 103.)

rights and income within industry, which pertain to the problem of legislation:

1) Democratic procedure and due process are desirable in labor unions, but are not assured by the normal operation of the institution;

2) Legislation may enhance the possibilities for democracy and due process;

3) Such legislation should not impair the collective bargaining strength of unions;

4) Regulatory legislation should be kept to a minimum and should encourage as much self-regulation by unions as possible; and

5) Legislation governing internal union affairs cannot be expected by itself to create democracy; it can only guarantee certain minimum preconditions.

Neither new legislation, nor concerned, critical intellectuals, nor even an extensive program of independent public review can create union democracy, e.g., reduce membership apathy or institutionalize opposition groups. But such efforts can increase due process within unions, and can effect an environment in which opposition, when it does occasionally arise, can be heard. Realistically, this is as much as can be expected from any private government. And to those who still fear that encouragement of democratic rights within unions threaten the polity, let me end with a series of questions posed recently by Paul Jacobs:

> Why shouldn't union leaders exclusively represent the wishes of their members when there is a conflict between the members and some other group? Who else will? How can we accept unions as legitimate interest groups and at the same time object to union leaders acting primarily on behalf of their constituents? If union leaders do not primarily represent their members, are not the members abandoned?[114]

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114. "The $3 Haircut," A Report to the Fund for the Republic, (dittoed, June 1960), p. 12.

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Personal Contacts and Public Policy
A Realistic Approach

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association New York, Statler-Hilton Hotel, September 8 - 10 1960

This subject was suggested to me by Dean Harland Cleveland and I agreed to try my hand at it somewhat reluctantly because of its wide ramifications. If I speak from 40 years of practical experience rather than present a carefully balanced list of scholarships fellowships cultural or professional exchange arrangements from Rhodes to Marshall it is because these lists can be found in a Unesco handbook and in a wide variety of official and unofficial documents.

In thinking over this problem I am always haunted by a remark made by my old and now venerable tutor, Professor R. H. Tanney, "Some people travel and think that they are broadening their minds whereas they are only elongating their conversation." If I may start with a platitude which really sums up my experience it would be this--personal contacts at the international level can undoubtedly enrich the individual both in his own professional tasks and in his own personality but they do not necessarily affect the international relations of countries and governments. They are certainly no compensation for the absence of a sound and imaginative foreign policy.

In comparatively recent years governments have built up departments which aim to project their image overseas. In my own country the organization is called the British Council; after some criticism from left and right, it has now become part of the Establishment. Its work started in the Middle East with a semi-political slant and now its branches encompass most of the world, especially in the Far and Middle East and Latin America. Admittedly it has a two-way significance. Not only does it aim to project British culture and language overseas, it also brings many young scholars and eminent professors to Britain. More recently it has been given large sums of money to distribute and make known British books largely becasue of Soviet cultural imperialism. Your own United States Information Service (U.S.I.S.) has excellent libraries all over the world and performs other cultural services. The French have always been experts in this field and General De Gaulle has appointed a distinguished man of letters, Andre' Matraux to take charge of the Paris office. Before the war Germany undertook a very large campaign overseas and to my personal knowledge cultural and spying activities were sometimes cunningly interwoven. I suspect that Soviet activities

are similarly geared today. The point that I wish to make is that in most countries. Democratic or Dictator, these overseas offices are linked more or less closely with Foreign Offices. For my part I would prefer them to be foreign extensions of Ministers of Education rather than education extension of Foreign Offices. But living as we do in an atmosphere of cold war, it is difficult to disassociate cultural activities from those of governments. Indeed one could point to much good that has emanated from the lairs of artists, theatrical and musical, conducted or at least financed by governments. But a warning note must be sounded on the danger of governments entering and monopolising this cultural field. It is one thing to facilitate by discrimnatory financial aid the movement of persons and of cultural activities abroad; it is quite another matter to identify culture with government.

What then is the extent of personal contacts at the international level and what is their significance? Needless to say, the volume of these contacts has risen with the ease of communications to an astounding figure. The inter-penetration of national cultures by a constant flow of foreign visitors has now reached a record. No country is immune, not even the Soviet and its satellites. In many countries the balance of payments is visibly affected by the fact of tourism. One American visitor travelling first class on the Queen Mary brings to the British economy the equivalent of the export of a meduim-sized automobile to American shores. But this paper is not concerned with transatlantic or any other form of tourism as such. It is rather concerned with the world-wide effect of scholars and professional persons moving from schools, universities, technical and professional societies.

My own country has a rich network of scholarship and educational exchanges with Europe with the Commonwealth and with the United States. This vastly increased contact should by now be having some influence on British international relations. Yet our relations with Europe are still at sixes and sevens in the economic and political field. Over 200 members of Parliament have spent varying periods at The European Parliamentary Assemblies and yet we do not seem to be able to understand the Continental approach to European federalism. A large number of Members of Parliament have visited the United States, either through University scholarships Smith-Mundt fellowships, Debating Teams, visiting lectureships or on business. We meet also in the NATO Parliamentary Conference and the inter-Parliamentary Union. Similarly a new scheme of exchanges and scholarships has been recently established within the Commonwealth. Teacher Exchanges between Britain and the United States and Britain and the Commonwealth are now common form. So one might continue.

The United States, more than any other country, has such a wide circle of personal contacts abroad and such a generous provision for foreign students and lecturers to visit the United States, that I forbear mentioning them to such an audience. But once again I am forced to ask the question: Can we begin to evaluate the effect of this movement on international relations? Even if there are 2 000 professors and 12 000 American students overseas this year, and 50,000 foreign scholars and students on American campuses it is salutory to remember

that the first figures represent less than half of one per cent and that ninety eight percent of students on American campuses are not foreigners.. Nor do travel and personal contacts as Mr. Tanney's aphorism necessarily broaden the minds of those privileged to enjoy them. I am not suggesting that the main object of travelling scholars and students should be to further international understanding! This, like happiness, is a by-product. I always used to think that Anglo-American relations, like Victorian children, were meant to be seen and not heard. It is probably true that the exchange of ideas and specialist knowledge by men and women who have a common expertise produces the happiest and most natural understanding. There is something artificial about the conscious cultivation of international understanding. Yet the problem cannot be left in this vague middle-mist.

I have encountered one aspect of this problem in the last decade, in connection with the struggle for European and Atlantic unity. Let me state it starkly. It would be quite impossible to create a European Parliament, if the parliamentarians had never met each other. Forutnately over a thousand representatives of European parliaments have not only met, but have found friendship. I have tried to describe this process in two recent books.* Whatever success these assemblies have achieved the countless meetings of parliamentarians in political groups and numerous committees is helping to create a new consensus. The one meeting of Europeans and American Senators and Congressmen at Strasburg in 1951 provided a week's experience which few of those present are likely to forget. The role of parliamentarians in developing regional organizations could be described and evaluated in greater detail. as Professor Ernest Haas of the University of California has demonstrated in a number of studies. A similar experience has taken place through the Commonwealth Parliamentary Association and in a general way through the Inter-Parliamentary Union.

At a recent Conference at the Hague I tried the experiment of mixing European parliamentarians with a quota of international administrators and professors of political science and international law. The Conference lasted three days and included thirty-five members. It took me six months to prepare and circulate a series of papers to receive back comments and thus to 'involve' all members beforehand in the questions facing the Conference. The result can now be read in the book, European Assemblies, to which reference has already been made. I claim no novelty for the technique but I was forced to realize that in Europe at any rate there is far too little constructive round-table discussion. A large field of operations lies open, untilled. Moreover, this particular experience sharpened my awareness of the gulf that divides the academics from the practictioners, not only in political science but more particularly in the field of international politics.

Physicists are humbly searching for a new order in the Universe. They await another Newton or Einstein, who in Oppenheimer's words "by an explanation of immense sweep and simplicity" will give a new glimpse of harmony and order.

* Toward a European Parliament -- Council of Europe - Manhattan Publishing Co.
European Assemblies 1949-1959, The experiemental Period -- Praeger.

Is it so very different in the realm of political society and international affairs? Is there not an absence of master voices, that sound over frontiers, geographical and partisan and speak to all peoples? Are we helping to produce the climate in which such voices can be heard? Political science is the cementing department which should unite political theory, history, sociology, government and administration and what is loosely called international affairs or a living process, so that a trained student can synthesize integrate and see the sweep and the detail. At the total level Communism can beat us every time, but at the person-to-person level we are bound to win, because a responsible commonwealth will always defeat an irresponsible political mass. Western civilization, as it has unfolded since the Seventeenth Century in Europe and North America, should provide the people of the Atlantic Community with dynamic and revolutionary ideas capable of providing a faith or as Madariaga puts it, "a worldwide freedom party to work everywhere for freedom." He adds "a thousand scholarships a year for as many Soviet graduates to come to the United States to follow post-graduate courses would not cost more than an atomic gun and make far more noise." The positive task is to help create a democracy in which the experience and wisdom of leaders are meshed with the understanding and support of peoples. The answer of the Western world to the rising nationalisms of Africa and Asia is not to sell America or Europe, but to share our ideas as well as our food, to identify ourselves with the struggles of the new nationhoods.

I am now suggesting that we need a much more imaginative, intelligent and comprehensive programme of education for foreign students in all our countries. Who that has taught in a university cannot testify to the beneficent influence of foreign students in our midst? Is it merely fortuitious that Rhodes Scholars preside over many distinguished universities banks, foundations, and leading governments? Glance at the British record of Commonwealth and other scholars and even Oxford debaters who have spent some time in this country. I am not suggesting orientation indoctrination courses for anyone, but a statesmanlike realization of the value of planned exchanges between the scholars and professional men and women of our several countries. Educational travel, by whatever name it goes has come to stay· its possibilities for good are unlimited. The "grand tour" for the elite has been replaced by "cooks tour" for all. But good communications at the person-to-person level have a far-reaching significance, out of proportion to short-term policy. They should be a natural part of all advanced education. In the realm of political science and international studies there is need for a radical reevaluation of both the content, methods and objectives of teaching comparative government and international organizations and of utilizing the presence of visiting students and professors. Admittedly, the spriit bloweth where it listeth but personal enrichment is only one aspect of a much bigger problem. There is a social contribution which foreign scholars can make: too often this is neglected both at the giving and receiving end. With the vast increase of university education, not only in the United States, the campus has suddenly become an important factor in the life and stability of countless countries from Turkey to Japan from Germany to Brazil. Might there not be in every university a minimum built-in staff and accomodation, imaginatively planned, to emphasize the universality of the republic of learning and might not a few fast principles be agreed for common guidance and acceptance? I throw out the challenge.

IS INTERNATIONAL RELATIONS A DISCIPLINE?

A QUALIFIED ASSENT

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Prepared for delivery at the 1960 Annual Meeting of the
American Political Science Association

New York, Statler Hilton Hotel

September 8-10, 1960

VALLEY FORGE

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INTRODUCTION

I have called my paper "A Qualified Assent" for two reasons. The first is that I share the skepticism of many of my colleagues as to the exactness which can be achieved in our discipline. My second reason is that I believe that international relations, properly regarded, is but one branch of the discipline of political science, a branch equal in dignity with, but no more dignified than, for example, the study of national politics or of municipal politics.

In the course of this paper I shall sketch an inexact model of international relations. I shall make a defense of that model. And, finally, I shall suggest several applications and implications of that model. One of these implications is that international relations will be increasingly institutionalized and that we teachers of international relations should spend more of our time inquiring as to what international structures are necessary if the nations are to live together. A second implication is that we should devote more of our time to research and reflection on the means to get to this objective. For we must not, it seems to me, spend too much time anticipating what may happen to groupings of independent states under this and that set of circumstances.

Professor Hoffman has recently reminded us of Aristotle's view of politics as the architectonic discipline. It is a salutary reminder. For me the implication of Aristotle's remark for our own time is quite clear: We must build a structure which will house the world. We do not yet have such a structure. Indeed, our profession does not seem interested in building one.

Professor Hoffman suggests that the science of international relations has the architectonic role which the science of the polis had in Aristotle's day. I am not so sure. For his suggestion implies that international relations is quite different from other branches of political science. I prefer to stress the similarities. For it seems to me that politics is the architectonic science and that international relations is but one part of the science of politics.

In my view a proper science of politics would have as one of its main objects the curbing of the scope of international relations, restraining its tendency toward elephantitis. And it is precisely by building a house for the nations that we can hope to curb the exaggerated and unbalanced powers of the national governments and facilitate a renewal and revival of our state and local communities.

At first glance, it may seem that I am demeaning our discipline, the discipline of international relations, when I urge that it should properly be regarded as co-equal, but only that, with the study of municipal politics and the study of national politics. But I mean precisely that.

We are all aware that the polis was the chief object of political study and political speculation for the Greeks. Sometimes we are a bit condescending when we mention this fact. But Plato and Aristotle both believed that life was most civilized as lived in those small, intensely civic, political communities. If Plato and Aristotle were alive today, would they have us try to recreate the polis? A wise professor of mine once suggested that they would not. But, my professor went on, Plato and Aristotle might gently observe that, lacking the polis, we moderns must necessarily be less civilized than were the Greeks.

I am not here to support or oppose that contention. I only mention it to remind you of the high dignity in which the local community was once held. If international relations did not require so much of our time and our resources we might be able to spend more of our time and resources improving the quality of our local and our national communities. A proper science of politics would help us to reach a situation where we could focus more attention - and much more money - on our local and state communities. While we might well add certain functions to our national government we would nevertheless hope to curb its relative power in the nation.

WHAT KIND OF A MODEL?

We are told on good authority that no social scientist can work without having in mind an implicit model of the community with which he is concerned. I believe this to be true. We are also told, on good authority, that a model or system which would satisfy the requirements of the systems theorists does not yet exist. Indeed there are those - and I am one of them - who feel that an exact general theory of international relations is something we shall never achieve. Now I know that most systems scientists are quite willing to admit that their systems will lack the exactness and the predictive capacity of, for example, the physical sciences. However the qualified accuracy to which they aspire seems to me either an unwarranted claim or else, if properly qualified, a goal which can be achieved by less esoteric methods.

But in this paper I do not intend to take direct issue with those who have great hopes for the achievement of a general theory of international relations. I thought it would be more useful for me to try to make explicit my own implicit model of international relations.

I am afraid that my model is not very scientific if one asks for a high degree of exactness. But here we must remember Aristotle's counsel to expect only that degree of exactness which is possible in the science in question. Let me also add that my model is not very original either. It is eclectic in the extreme.

Where does my model come from? It has two major sources. First, there has been my own observation of an reflection on international politics - and on domestic politics - for a good number of years. My second major source has been the reading and reflection on works, old and new, which have tried for several millenia to make sense out of the phenomena and process of international relations.

What does my model do for me? Well, for one thing it helps me organize the data of international relations. For another, it indicates problems where research might be particularly fruitful. Finally, my model has - or seems to me to have - a certain predictive power. I think you will agree that if my model can do these three things it is certainly very useful even though it may not be the one true theory of international relations.

NORMATIVE OR SCIENTIFIC?

Before I describe my model I must make a confession. I am not sure if it is a "normative" model or a "scientific" model. My hunch is that it is both. I am reinforced in that hunch by the assurance of several writers who seem to me to say that the normative element is present even in the most scientific analyses of political phenomena.

Let me give an example. Some writers see international relations as a working out of the balance of power system. They observe what they call an equilibrium of power. Then they see a disturbance of this equilibrium. Finally, whether by wars or alliances or by some other means, balance is restored. This, we are told, is a scientific way of looking at international relations.

But isn't there an implication that the nation or nations which can restore the equilibrium, which can play the role of balancer, ought to do so? Certainly we are not surprised that Britain, the principal power balancer in recent centuries, is often judged - and not only by Mr. Churchill - to have served the interest of mankind by playing this role. The theory of the balance of power is, then, both a "scientific" theory and a "normative" theory.

In much the same way it was once the feeling of the financial community that when the securities market got too far out of balance the responsible leaders ought to enter the market to balance it, even at considerable cost to themselves. Frederick Lewis Allen gave us a memorable insight into that view in his book, The Lords of Creation. Thus the laissez-faire theory of economics was both a scientific theory and a normative theory.

My model of international relations finds the nations working toward a framework of international institutions with real authority and power. I realize that my model runs the risk of being called utopian, moralistic, imprudent and unscientific. Not surprisingly, I see the approach I suggest - and the proposals implicit in it - as realistic, prudent, moral (as opposed to moralistic) and scientific.

Let me refer once more to the analogy of classical economic theory. The classical economists went on trying to work out models of perfect or imperfect competition while the American economy was going into a tailspin. In the 1920's one might have heard them say that a securities and exchange commission sounded like an excellent idea in the abstract, that a federal deposit insurance corporation was a good idea in theory, or that an AAA might, under certain unlikely circumstances, be a fine thing. However, each of these proposals, you would have been told, sounded somewhat utopian. All of them were untried and therefore potentially dangerous. In any case, public opinion was certainly not prepared for them. One might even have heard that those making these proposals had no feeling for Original Sin. For would not Heaven - or History - punish men who ventured the Promethean suggestion that the business cycle could be and should be subject to some kind of controls?

I well remember - and this dates me - the dramatic tones in which my economics professor told of Justice McReynolds' dramatic utterance on the occasion of the Gold Clause decision. As Chief Justice Hughes announced his decision, Justice McReynolds said "Gentlemen! The Constitution is gone."

But of course the Constitution was not gone. Justice McReynolds' Constitution was gone. But John Marshall's Constitution was in the process of being rediscovered.

By 1933 it was obvious - in spite of certain professors of economics - that anti-trust prosecutions, FTC proceedings and injunctions from the White House were not going to be enough to restore the nation's health. It became increasingly obvious that a visible hand - a public one - must do the job which the invisible private hand could not do. Unfortunately it took a great crisis to make Americans - and their professors of economics - overthrow the laissez-faire theory of economics. It would have been much better and much easier - and the Roosevelt Revolution would have seemed much less revolutionary - if more of our economists - and our political scientists had understood the limitations of the laissez-faire theory with its night watchman state. If they had understood it in time the depression might have been prevented.

THE LAISSEZ-FAIRE THEORY OF INTERNATIONAL POLITICS

Should not the present crisis - a forty years crisis - in international relations be enough to convince our countrymen and our profession that it is time to abandon the laissez-faire theory of international politics, the classic theory of the state system, as a theory of what is going on in the world, as a norm for diplomats - and as a model for the researches and reflections of graduate students? It was, as I have said, regrettable that the economists did not prepare us for the overthrow of laissez-faire. But such preparation was, in those circumstances, not essential. However, I suggest that intellectual preparation and popular consensus are essential prerequisites to the nations' abandoning the state system.

As I will indicate later, the battle against the laissez-faire theory of economics is far from won in this country. And, as I shall elaborate later, until it is won our foreign policy will labor under grievous handicaps. I suggest that one of the major reasons for the strong hold which the laissez-faire theory, even today, have, on us is simply that it is not obviously inconsistent with our most sacred national scripture, the Declaration of Independence. For in the Declaration there is no obvious warrant for government playing a positive role in the economy. It was not just a coincidence that 1776 was also the year of the publication of Adam Smith's Wealth of Nations.

When we turn to the laissez-faire theory of international politics, we find that that theory still dominates the scene. When the intellectual community has forsaken it it may still have a strong hold on the popular mind. For nationalism has deep emotional roots. Furthermore, our Declaration seems to imply that national independence is of the order of nature. The idea of national sovereignty is much older than and much stronger than that of laissez-faire economics. France was sovereign long before she shed feudalism.

But just as Chief Justice Hughes ignored the American Constitution-according to-Herbert Spencer and resurrected the Marshall Constitution, - the Constitution, for example, of Gibbons v. Ogden - so we professors of international rel ations must go back before Grotiius and the Treaty of Westphalia to see where reflections on the problem of international order went wrong.

The American Constitution-according to-Herbert Spencer deified freedom of contract, holding, for example, that government could not intervene to strike a balance between the bargaining power of a fourteen year old millhand and that of the cotton mill for which he worked. This apotheosis of individualism, of freedom of contract, this denial of community, made the Great Depression inevitable.

The state system too has had its philosophers, the contractualists of the 17th and 18th century. They too tended to deify freedom of contract. If the state itself could be thought of as originating in a contract - a limited liability partnership - and if obligation went only so far as that contract, is it surprising that international obligations were thought of as depending on contracts for their existence? There was, of course, no duty to contract with another state. Thus if one had no contract with that state one had no obligation to it. Charity might recommend aiding a distressed or opressed nation. So might national interest. But justice could not demand it unless the nation's faith has been pledged in a formal treaty. Did not this apotheosis of the nation-state, of the contract theory of obligation, this denial of the international community, make 1914 and 1939 inevitable? It seems to me that it did.

It is inevitable in a laissez-faire business system that firms or associations of firms will smash into each other. There will always be those who tell us that of Mr. J. P. Morgan and his associates had had more wisdom and more influence - or both - the 1929 crisis might have been checked and confidence and prosperity restored. But common sense tells most of us that the disease with which we were suffering was beyond even the considerable skills of Mr. Morgan - that the fault was structural, that the great national corporations required a great national government to restrain and regulate them.

Our common sense, I suggest, tells us that the laissez-faire state system will not work either. Millions for anti-trust prosecutions were not the cure for the malady of 1929. And billions for defense will certainly not stop the Soviets or the Chinese from arming further. They will only force them to arm the more. Injunctions to remember the rules of the game will be similarly ineffective.

NATURE OF THE MODEL

My own view as to the proper and scientific way of looking at international relations differs substantially from the balance of power model. From his recent book, I gather that Professor Kaplan would find it somewhat similar to his universal international system. Professor Hoffman and Professor Kelsen might join in calling it the Rechtstaat view. Professor Talcott Parsons might call it the integrated community view.

In my view international politics have a tendency to evolve toward a world commonwealth, a world commonwealth with central decision-making organs which have the power and the authority to keep the peace and to promote justice. If we co-operate with this tendency we have an opportunity, literally and metaphorically, to enrich our national and local communities. If, like utopians, we fight this tendency there is good reason to believe that our national and local communities will not last very long or that, if they do last, they will not be very desirable places in which to live.

I imagine that it is unnecessary for me to spell out in much detail what this international order should look like or even why it is necessary. I shall spend more time on the more pressing question of how it can be achieved, given the international system which we have today. To put my point more scientifically, I shall spend most of my time examining the implications of my model for action in the present. For please remember that it is my contention, first, that international society is being drawn toward this goal and, second, that international society should consciously work toward this goal.

The model on which we must fix our eyes can be sketched quickly. It is not, it will be quickly evident, a utopia. We have no time for creating utopias. It is rather the minimum house necessary to shelter the world. Asking for less is utopian. So is asking for more.

This just world republic is a United Nations which includes almost all of the nations of the world. It necessarily includes all the major powers. It is a United Nations which has a monopoly of nuclear weapons and conventional forces more than ample to cope with the conventional forces permitted to any member nation - or any combination of three or four nations. It is a United Nations which has assured sources of revenue such that it can, if its political organs so desire, spur massive campaigns against poverty, disease and economic dependence. It is a UN in which no nation dominates another, in which dependent areas, if any remain, are wards of the world body rather than of individual nations. It is a world organization in which numbers will have some effect on representation in the legislature and in which world law will be enforceable on the individual citizen. It goes without saying that communism - at least of the Soviet and Chinese varieties - could not live in and would not be welcome in such a reformed UN. Nevertheless, as I have already indicated Russia and China would be members of this model UN. We shall deal with this paradox later.

IN DEFENSE OF THE MODEL

Why is it necessary for us to spend a mighty effort to build this house for the nations? The reasons seem to me clear enough. The United Nations, as presently constituted, cannot do the job of keeping the peace. Neither can the balance of power system.

All of us, I think, are convinced that that collective security via world organization is no answer to our nation's security problem. The UN does, as we know, play a most important diplomatic role. But when it comes to the enforcement of its determinations when resisted, directly or indirectly, by a major power it is relatively helpless.

VALLEY FORGE

The most the UN can do is to give its blessing to one side of the struggle and urge individual nations to join the fight. Alexander Hamilton spelled this out very clearly long ago. Professor Morgenthau and Mr. Walter Lippmann have done so in recent years.

The alternative to collective security is to rely on your own good right arm and those of your allies and friends. But the indefinite competition of great powers has an unhappy - I would say inevitable - tendency to break down. Now, perhaps breakdown is not inevitable. Perhaps statesmen with a common schooling in the art of power balancing will be able to keep this game up indefinitely and, somehow, moderate their competition in armaments, in technology, in propaganda and in economic penetration. But I would remind you that refinements in the art of power-balancing are appearing all the time. Our own country has taken the position that it has a right, even a duty, to fly airplanes over the heart of the territory of its most likely enemy. The case is a strong one. But its implications are most dangerous. The Hungarian repression and the current infiltration of Cuba and Congo are examples of the way the Soviet is playing the game of power balancing.

But is it reasonable to expect that all the nations will subscribe to the doctrines taught in the school of power balancing? Professor Carr, if no one else, will point out that the common schooling in the balance of power doctrine would be biased in favor of the status quo powers - and so it would. Let me suggest four pupils who will resist such indoctrination: Dr. Castro; Colonel Nasser; Premier Lumumba; and Party Chairman Mao. Should any one of these gentlemen achieve the power to which he aspires, is he really likely to be satisfied with minor changes in the balance of power, peacefully accomplished?

Again the laissez-faire business system is an apt analogy. After every recession or depression the economists explained in detail how it could have been avoided if firms, big and small, had acted rationally. Most classical economists felt strongly that government ought to keep hands off and let things work themselves out. Or, at the most, government should prosecute illegal combinations. Prosperity was just around the corner. If the unemployed would only resist the pleadings of demagogues things would work themselves out. Fortunately the unemployed and the employed decided to be guinea pigs no longer. It is to be hoped that the nations will come to the same decision.

The world must, then, be reasoned into a world state. It must be convinced that such a political community is necessary, desirable and possible. But to convince our pragmatic nation and to persuade our empirically oriented social scientists will be, as Professor Kissinger has reminded us in another connection, very difficult. For there have been no just world commonwealths. Without examples to study and evaluate we feel uncertain and, like the economists of 1930, we hesitate to trust our common sense.

I suspect that I have carried you along this far. That is to say I imagine that most of you agree that the present balance of power - or balance of terror - gives us no real security and that eventually technology will upset it. You probably agree that, at least hypothetically, only a world state can prevent this upset and the resulting holicaust. Indeed this point of view is implied by a number of the leading texts in our field. I imagine further that most of you would agree that communist doctrine and

practice makes it most unlikely that communist nations will join a world commonwealth. One conclusion is, of course, inescapable. But we avoid it. The communists must be undermined in their own land. But, you ask, are we to take this proposal seriously? It is essential that we must take it seriously.

IMPLICATIONS OF THE MODEL FOR FOREIGN POLICY MAKING

If our model of world politics, our normative-scientific model, is an accurate one it ought to throw some light on this question of how to undermine the communists in their own lands, how to undermine them so that the peoples of these lands can help make the United Nations into a just world republic. Let us look more closely.

Our model tells us that an integrated international community probably will not be workable unless it gives substantial economic powers to the central organs. Here we part company with most of the organized world federalists in this country. Without these economic powers the amended UN Charter would resemble a hypothetical American Constitution which retained the contract clause but had no general welfare clause. In America this would mean that the federal government would be required to foreclose Wall Street mortgages on Nebraska farms but would be unable to render economic assistance to Nebraska farmers. I suggest that you can't have our Constitution's contract clause without its general welfare clause. Nor can you have a system of world trade based on legally enforceable commercial agreement unless you have a system of world welfare which alleviates the injustices which these agreements will often make for. That international commercial agreements should be enforceable in world courts seems to be desirable but, as we have just observed, fraught with difficulties. We have only to recall expropriations in Mexico, Iran and Cuba to remind ourselves that international commercial agreements are not sacred today. We have only to point out the unequal bargaining power of the states and private corporations concerned in order to remind ourselves that it is by no means clear that justice can be equated with legal documents. It is clear then that a world state without substantial economic powers at the center will be very liable to great unrest and even civil war. A world political community without the power to deal with these problems would not seem a very desirable goal, even for the "have" nations. Let me add that in my view there is no chance that that kind of world state could be established.

For a world state with no positive economic powers - whether or not it allowed tariffs - would find the economically weak nations under the domination of the large ones and dependent on their charity. Given the widespread currency of the phrase "economic imperialism" and all that phrase implies it seems unlikely that the "have not" nations would trust their destinies to the charity of the "have nations.".Today the underdeveloped nations can, if they wish, expropriate foreign holdings. Or they can threaten to expropriate them and by this technique cause foreign firms and foreign nations to deal more generously with them. They are unlikely to exchange this system for one which reduces their control of foreign enterprises on their soil without providing sure protection from exploitation by these enterprises. Communists - and many who are anti-communists - will be quick to point out the faults in proposals for a world state which pretend that there is no relationship between world economics and world politics.

On the other hand a proposal for a world state with substantial economic powers would have a great impact in the neutralist world and in the Communist nations themselves. Let us say, for example, that the United States agreed to a proposal at its inception which would allow the United Nations to tax us some fifteen billion dollars a year for economic development. This would imply a total UN potential for this purpose of about forty-five billions. Funds to this amount, if wisely spent, could put India and many other underdeveloped nations far along the road to economic independence. Neutralist leaders who have rejected American aid because of real or suspected strings would be greatly attracted by a proposal of this sort designed not only to secure peace and preserve liberty but also to meet the challenge of hunger, disease and economic dependence. And not only would such a proposal attract the neutralists. It would also attract many Russians and Chinese who have been led astray by the doctrines of communism.

The promise then must be adequate. It must make sense in terms of the problem. That is it must, hypothetically, be able to solve the problem. But it must, as we have seen, also seem desirable, seem worth working and sacrificing for. It also must seem probable that those who are making the promise mean what they say.

This aspect of the promise, its credibility, has certain implications for the present. In our own country, by and large, we do not believe the candidate whose promises are blatantly contradicted by his present and past performance. Should we make the proposal which I have outlined, our sincerity will be judged by other nations on the basis of our performance on the economic problems of today's world. Questions such as these will be asked of our aid programs: Do we insist on giving most of our aid bi-laterally ? Do we put too many conditions on our aid? Do we seem to require military alliances in exchange for it? Is it but a small portion of what is required and of what we can afford to give? Do we throw up tariffs as soon as a foreign producer begins to be successful in the American market? If we deal with the world's economic problems in these ways it will be obvious that we don't mean what we say or at least that we are not doing what our promise implies, i.e. moderating the effect of our dominant economy by a combination of multi-lateralism and of self-control.

Just as a viable world state must have a fairly balanced economy it should also, for example, have a fairly balanced civil service. The implication for present conduct is obvious. Not only should the United Nations continue to recruit widely and according to national or regional quotas. But it is of the utmost importance that each nation be helped to develop trained administrators of a wide variety of skills. For what did the world conclude from the fact that Belgium had trained no native administrators in the Congo? Two things, I think: The first is surely that the Belgians really had no plans to give the Congolese their freedom. The second is surely that when the Belgians did decide to give the Congolese their freedom the Belgians thought it inevitable - and doubtless fortunate - that the lack of trained administrative cadres would mean that Belgium administrators would be required in key jobs for many years to come.

If, then, we seriously plan a world state which will be dominated neither by the wealth of the present "have powers" nor by the administrative skills, we can show it now by aiding the economies and administrative systems of those countries. It is true that

substantial action along these lines will require substantial appropriations and somewhat controversial legislation, e.g. in the tariff area. But if we cannot develop the consensus which would make these interim measures politically possible it is certainly unlikely that we can develop a consensus about establishing a world state with substantial economic powers.

Our model also has implications for the security problems of today. It looks forward to a commonwealth which aids the peoples and nations to achieve world freedom, economic health and national security. One obvious implication is it is obviously of special importance that independent nations be made secure in their independence and that nations enjoying political freedoms be protected in those freedoms, insofar as possible. This implies, among other things a continuation of the containment policy. It implies a balanced defense establishment. And when it comes to the coordination of our security efforts with those of other friendly nations it calls for a sophisticated and complex policy equal to the sophistication and complexity of the problem. We must abjure the blind simplicity of a policy which tries to make every nation an ally. If we make a sober and honest review of our policies since World War II, we may yet learn from our mistakes. Otherwise we may yet find ourselves waiting for High Noon alone and against superior numbers.

What special implications has our model for our relations with the Soviet Union and with Communist China? Everything I have said so far can be summed up in three words: promise and performance. Or, at somewhat greater length: Preach a worthwhile promise. Perform in the present as if you really mean that promise.

Let us assume that the Western nations and the uncommitted nations agree on the nature of that promise and that they perform in the present along the lines I have suggested. This combination of promise and performance cannot help but have profoundly disturbing effects within the Communist world. Let me draw on two analogies to help make my point. Neither is perfect. But both, in my judgment, have much to teach us.

TWO ANALOGIES: CAVOUR AND WEBSTER

First, let us take the story of the unification of Italy in the nineteenth century. This is a complex and much debated subject. But I suggest that there would be general agreement on the following summary. The ideal of a united Italy was very old. In the nationalistic nineteenth century it was especially strong. But the age-old question persisted: What <u>kind</u> of united Italy do you want?

Finally one part of Italy, the kingdom of Sardinia, established a constitutional monarchy, with Victor Emanuel II as king and Cavour as prime minister. This kingdom allowed considerable political liberty and began to experience substantial economic prosperity. It began to be suggested that constitutional monarchy with political liberty was the kind of united Italy that Italians wanted. The performance of the Cavour government in Sardinia implied that this ideal could become a reality. The idea of a united Italy of this kind was preached throughout Italy. The attractiveness of the promise, together with its credibility, given the example of Sardinia, these and Garibaldi's thousand men were what united Italy. In the background, of course, were French hostility to Austria and British benevolence.

Our next analogy, also from the nineteenth century, has to do with the loyalty of our western states to the Union, a loyalty which was a sine qua non to the preservation of the Union. We forget that it was by no means inevitable that the West would side with the Northeast in the great struggle with the South.

In the first decades of the nineteenth century many New Englanders reacted strongly against the growing strength of the Western states. In 1814 the Hartford Convention suggested a variety of constitutional amendments which would have curbed the West's strength. A number of these amendments involved the fraction two-thirds. Declarations of war, admissions of new states, embargoes - each of these measures would now require a two-thirds vote. Later other New Englanders, including Senator Foot of Connecticut, wanted to cut down on the great federal land "giveaway" (as Foot called it) which was attracting so many sons and daughters of New England to the West.

Senator Foot's motion to this effect - how many of us remember it or remember him? - triggered one of the greatest constitutional debates in our history, the famous Webster-Hayne debate of 1830. Senator Thomas Benton of Missouri voiced the Western states' outrage at this obvious assault on their economic growth. Senator Robert Hayne of South Carolina explained to Benton that economic oppression of the West, whether through making federal land more expensive or through the protective tariff was considered New England policy. Hayne suggested that in the agricultural South, the agricultural West had both a fellow sufferer and a natural ally.

With great perceptiveness Senator Webster of Massachusetts saw that his section and the nation as a whole had come to a great turning point. New England could pursue the selfish sectionalism of Foot and of the Hartford Convention. Or New England could reinterpret and broaden her aims in a national vision. Webster chose the latter course. His great speech was not only a masterly refutation of the doctrine of nullification. It was also an assertion that the national government could and should engage in economic development programs for the benefit of the entire nation. My favorite line in Webster's passage is a rather obscure one. But, properly understood, it tells this generation of Americans what it must do. Or so it seems to me.

At this time the Senate's presiding officer was the great philosopher of nullification, John C. Calhoun of South Carolina, the Vice President. In the course of his speech Senator Webster cited numerous ways by which New England had assisted the development of the West. The list began with the Northwest Ordinance itself and its provisions that the states formed from that territory would be equal with the older states and that federal land should be set aside to aid in the development of schools. Webster's catalogue stressed recent appropriations to build roads and canals to the West. As he developed his theme, Webster turned to the presiding officer and went on: "Sir, if a railroad or canal, beginning in South Carolina and ending in South Carolina, appeared to me to be of national importance and national magnitude . . . . if I were to stand up here, and ask, what interest has Massachusetts in a railroad in South Carolina, I should not be willing to face my constituents." Senator Webster emphasized that Senator Foot did not speak for New England when he moved that the Foot Resolution be tabled. It was.

What relevance has Daniel Webster to our foreign policy problems in the 1960's? This is the centennial of Lincoln's election, not of the Webster-Hayne debate. But that is precisely the point. Who was Lincoln and what did he stand for? In a word, Lincoln was a westerner who believed with all his strength in the Union. What kind of Union? Daniel Webster's kind of Union.

Lincoln's basic political philosophy had four main sources: the Bible; the Declaration of Independence; the Constitution; and the speeches of Daniel Webster. The West - and the most illustrious man of the West - sided with the Northeast because the Northeast had a broad vision of the Union. And the West, with a population greater than the entire South, made the difference.

When will our UN representative be able to tell the world that the people of America insist that America be taxed so that the UN can build roads and dams in India or Bolivia or the Congo? I suggest that when that day comes the days of communism will be numbered. Or, that until that day comes, we shall not succeed in the essential job of undermining the Communists.

Promise and performance. My model tells me that these are what will undermine communism in the world. But it is probable that they will not be quite enough. What will give the final blow to the Communist regimes? I suggest that we must let our sense of analogy play freely. We should, for example, research and reflect on the numerous kinds of revolution which the world has witnessed, particularly those which required the least violence or no violence at all.

I have already mentioned Garibaldi's Thousand. But did it take many more to overthrow the Nuri-el-Said regime in Iraq, the Rhee government in Korea, the Menderes regime in Turkey? Each of these revolts was well prepared for by propaganda against the incumbent regime. Each was deeply influenced by the movement of external events. Let us remember that the Hungarians, in 1956, would have thrown off the Hungarian communist yoke if there had been no foreign interference. The Poles would have done the same.

So will, at the appropriate time, the Russians and the Chinese - unless of course, Russians and Chinese are not men. I would like to suggest, and merely suggest, my own view that, given proper preparation along the lines I have sketched, the appropriate revolutionary technique may be some variation on the civil disobedience techniques of Gandhi.

PHILOSOPHIC IMPLICATIONS: A CONSENSUS

I am sure that each of these reflections on the implications of my model has a common theme. That common implication is that we must consciously foster a consensus that the achievement of a just world state, a world federation, is a desirable goal and one realizable within the relatively near future. Obviously we must also foster a consensus that the indicated interim measures must be taken. I need not remind you that developing such a consensus will not be an easy task. Even now most of our own citizens and many of our leaders do not have a proper appreciation of the legitimacy of the state's role in

the economy. As we political scientists are well aware, the major New Deal reforms resulted in large measure from the power of the underprivileged at the ballot box rather than from a mass conversion of economists, publicists and business leaders from the laissez-faire philosophy. In our infatuation with the concepts of ideology and the group process we political scientists have tended to consider it irrelevant that many of our citizens are still strong believers in laissez-faire. Fortunately, as a large and wealthy nation with strong political institutions, we have not suffered as much from this disagreement on political philosophy as we otherwise might have suffered. But it certainly has retarded social progress to a considerable degree. Our school systems are inadequate. Our cities are, on the whole, ugly. Millions of our older citizens cannot afford adequate medical care. As we political scientists are fond of pointing out, when one of these problems becomes acute something usually gets done. Why? Because, through their influence in the Congress or in the electoral college, the affected group is able to convince political leaders that their votes may go to the other party.

But things don't work that way in the international arena. If there is great poverty in Latin America, racial discrimination in South Africa, totalitarianism in the Soviet Union, the people of those areas can only ask that we help. As reasons why we should help them, they can invoke principles which they hope we share with them. But they cannot, except very indirectly, affect our political processes enough to make us help them. Our help is motivated not by fear of reprisal at the polls but by some sense of what our interest and duty dictate. If the military threat to the country in question is not very great, our sense of duty will be our only guide. But if our sense of duty tells us that foreign aid, like farm subsidies, is a departure from a sound political and economic philosophy the paralyzing effect of such an inadequate philosophy will be much more operative in the international sphere than in the domestic sphere.

Thus our model requires a consensus not only on what we want and how we are to get there but also a consensus on what we must do now in order to move in that direction. I feel that in our own country this will probably require a conscious reexamination of our political philosophy. Let us hope that the current discussions of our national purpose will help to precipitate that discussion. For while our most sacred national documents, the Declaration and the Constitution, have obvious implications as to a people's right to be free from foreign rule and their right to govern themselves they do not have unambiguous implications as to government's responsibility for the health of the economy. Scratch an American and, in spite of Mr. Acheson and Governor Dewey, you will find an anti-colonial. And this is one of our healthiest assets in the present world struggle. In the past it has made it relatively easy for anti-imperialist Americans to defeat proposals for an American imperium. It has also, fortunately, made most Americans relatively impervious to sophisticated appeals to suspend judgment as to the morality of colonialism, e.g. to look the other way when the British and French made war on Egypt.

What we need then is a clearer understanding that government has a responsibility for the health of the economy and of the citizenry. This, of course, does not imply socialism. We are all familiar with the fact that after a dozen years of the New Deal a greater proportion of our citizens owned their own homes than before the New Deal. We

are all familiar with the fact that in more than one European nation where politics have a decidely left vocabulary there is less government intervention and regulation than in our own nation, with its fondness for the vocabulary of economic individualism.

I suggest that on its own merits and as a counterpoise to the centripetal tendencies of a world state we must make a greater effort to enable our local communities to solve their own problems. We should encourage other nations to develop a sense of community at the local level, some perhaps, imitating India's fine Village Development movement. Tocqueville long ago warned us of the centralizing tendency inherent in democracy. Let us plan to help local communities to overcome some of the obstacles, especially the financial ones, which prevent them from dealing with their own problems.

But what we need most of all is a reassertion of the principle that our obligations run as far as the human community of which we are a part. As a practical matter, we may be unable to help all the countries we would like, to the extent that we would like. That is perfectly understandable. Or, having the means, we may, because of selfishness or sloth, neglect our duties. That too is understandable. The remedy is the traditional one. The more conscientious among us will urge us to be our better selves. But if we persist in the fallacy of contractualism, in the assumption that we have no duties to foreigners unless and until we have contracted with them, we shall have an almost impossible task.

I suggest that our remedy is as old as the discipline of politics. It is in recalling Aristotle's assertion that man is by nature social and political. That assertion is, is it not, a normative-scientific proposition? Fortunately our Judeo-Christian tradition has saved us from some of the follies inherent in contractualism. Suppose, for example, that the groups who supported the Marshall Plan had been forbidden to talk about our duty to foreigners and had had to present the plan only as a technique for stopping communism. I suggest to you that the effort would have been neither as large nor as successful as it was. For the calculus that establishes a connection between foreign aid and stopping communism is an involved and cold calculus. But the proposition that those who have should help those who have not is a simple proposition. It is easily understood. More often than some would think, it is acted upon. What I am suggesting is that the best way to build up the social tissue which Dr. Niebuhr finds lacking in the world community is for us to assert - and implement - our obligation to help other men.

SCIENTIFIC IMPLICATIONS

I have already talked at length about the nature of my model of international relations and about its implications for action in the present. I now want to redeem my promise to tell you how this model helps me organize the data of international relations, how it suggests fruitful areas for research and how, finally, it helps me to predict. Obviously these matters are interrelated. You research certain problems in a certain way in order to anticipate future problems.

If our model indicates that the world is evolving toward a world state, how will this affect the organizing of our data? I suggest that our model would lead us to take an especial interest in all those persons, institutions and processes which can have an important effect on the possibility of achieving a world state. We should, for example,

take the United Nations quite seriously, much as a colonel must pay particular attention to the headquarters company around which he is to organize his batallion. We should examine quite clearly the relevant actions and pronouncements of influential heads of governments and of important governmental institutions and personalities. We should do the same for our great interest groups and for the press. We should seek out data which bears on such questions as these: Are these beliefs and actions consistent with beliefs and actions which seem to be prerequisite to a world state? If not, does the inconsistency proceed from principle or from prudent adaptation to special circumstances? How, if at all, can these beliefs and actions be modified? Do their presence and persistence cause us to modify our view as to the immanence of, the route to, or the nature of a world state?

Now you will say - and I agree with you - that many of these problems are being investigated or have already been investigated. My answer is that facts already uncovered or additional facts which may come to light may take on new significance if viewed in the light of this model.

What problems for research does my model suggest? First, let me substitute for the word "research" the much broader term, "inquiry". For, as you will see, I feel that we must be very careful not to curb the inventiveness and the natural curiosity of our students by insisting on a too rigorous methodology. I want our students to develop a facility for analogizing. They will, of course, never see two situations which are exactly alike. Nor can mathematics make them alike. However sound common sense and wide reading may help them to discover significant similarities between seemingly dissimilar problems.

Then let me add that my necessarily short list of problems for inquiry is not meant to criticize other lists. I have limited myself to the kind of problems which might not have as high a priority to persons who have a different model of international relations. Most of these problems have a somewhat philosophic flavor. This follows from my conviction as to the importance of developing a consensus.

I have indicated my belief that the present Soviet and Chinese governments must be replaced before my model becomes fully operative. But how? A searching inquiry into the strategy and techniques of past revolutions might suggest answers to this important problem. I have already implied that we might gain some important insights by re-examining the story of Italian unification and by searching out the reasons why our Western states were so anxious to preserve the Union against the secessionist threat. What caused the Czar's troops to side with the revolutionaries? When did the young Hungarian communists decide to revolt - and why? Why did the generals plot against Hitler fail? What might have made it succeed? Would abandonment of the slogan "Unconditional surrender" have helped?

As to the failure of secession in our country I suspect that one of the most important reasons for it was that a great federal giveaway program was helping to make the West populous and prosperous. We should re-examine that giveaway program - which, in any honest comparison, far overshadows our present foreign aid program and, of course, dwarfs the present UN program. How large and how important were the internal

improvements programs in binding the states together? Would the communist effort to subvert the world get anywhere if it were answered by a foreign aid program of the scope of our Western land giveaway and our internal improvements programs?

I have dwelt at length on our failure to appreciate the extent and legitimacy of government's role in the economy. That failure has handicapped our thinking about important foreign policy problems. It has also caused many foreigners to believe that the role of government in our economy is as small as classical economics says it should be rather than as large as it actually is. How has this come about? Among what groups and in what sections of the country is the older theory most popular? Why? What effects has this schizophrenia had on our policy making? I would like to see some of us investigate the political and economic philosophy of the American world federalists. I suspect that it is not their general goal, i.e. a world federation, but rather their specific version of it, i.e. a world federation with no powers in the economic area, which has caused them to have so little impact on the world. Why was it possible for the American world federalists, in the late 1940's, to analogize from a version of the American Constitution which had died in the late 1930's? The critics of the world federalists say that their mistake was in analogizing from the American Constitution. It seems to me that their mistake was they did not understand the American Constitution or the events surrounding its adoption. To take a simple example: The Ordinance of 1787 was, among other things, a guarantee that there would be no colonialism, whether by individual states - or by the nation as a whole. - It was also a promise that substantial federal aid would be given to the educational systems of the new states. It is ironic that the man who allowed the federal government to write welfare legislation, by his crucial vote in the Jones and Laughlin case, Justice Owen Roberts, should ten years later head a federalist organization (Atlantic Union) which would deny a positive economic role to its proposed central government.

I would have us look closely at the reasons why countries such as Indonesia have turned down American economic aid. I would inquire into the impact - and I think there was one - of the Atlantic Charter on Asia and Africa. I would try to understand how Frenchmen, e.g. Georges Bidault, have been able to reconcile colonialism with liberty, equality and fraternity. I would have scholars seek out the speeches and writing of the new nations in order to see what, in their judgment, America stands for and, if the scholar can find this out, what had led these leaders to these judgments. I would have scholars examine the impact of the American experiment on 18th and 19th century Europe. I would have us explore what American public men and American public opinion have, in different eras, felt as to the implications of our Declaration for our foreign policy. I suggest that the public men of an earlier day may have something to teach us about dealing with independence movements in other lands. I would have some of us, like Madison, collect and ponder federal constitutions and texts which describe the workings of these constitutions.

Especially important, in my judgment, would be inquiry into the philosophy and tactics of civil disobedience. May not Gandhi's satyagraha have a crucial role to play in both Russia and China? You may say that Russia and China are not India. But

neither are Birmingham - with its bus boycotts - nor Greensboro, or a hundred other Southern communities, with their lunch counter sit-ins. Gandhi borrowed heavily from the New Testament and from Tolstoi. Both are still part of Russia's cultural heritage. My model suggests that we should give relatively high priority to the study of sit-ins and satyagrahas.

It would be important to understand what mental image Asians and Africans have of our Constitution, our political process and our history. And what kind of political philosophy do the average American and his mentors have? Does it, as I suspect, combine satisfaction with specific governmental endeavors with guilt feelings about the role of government in the economy? It would be useful to draw this material - with particular reference to foreign policy - from materials to be found in the writings of editorialists, columnists and the like.

The speeches and writings of public men should be analyzed to see what kind of mission they envisage for the United States, what model of international relations is to be found in them. It would be very useful to compare these models with those of public men of the past, e.g. Webster, Lincoln, Wilson and Roosevelt. Instead of being amused at assertions that the cause of America is the cause of mankind we might seriously ask what these serious men meant by assertions of this nature. David Mitrany once remarked that Wilson and Roosevelt were much greater realists than Ambassador Kennan. What could Mitrany mean?

Before indicating the predictive uses of my model I must make the usual qualification that its predictions are conditional and that it cannot be expected to predict the specific event.

My model tells me that we shall see increasing, and increasingly successful, efforts to overthrow colonialism, that America will be asked to make many large foreign aid contributions and that we shall respond to the call. For many years my model has been telling me that European colonialism will be rapidly liquidated. It has also been saying - since it is a normative model as well as a scientific one - that we should associate ourselves with the revolution against colonialism as well as with, as it has been called, the revolution of rising expectations. Almost everyone, you will say, is now of that opinion. And you are correct. But ten years ago many writers and teachers of international relations did not take these predictions seriously. They dismissed the notion of associating ourselves with the anti-colonial revolution as moralistic. Read, for example, Mr. Kennan's work of ten years ago. You will be hard put to find any appreciation or anticipation of the imminent emergence of forty Asian and African nations as important actors on the world stage. The increasing neutralism of Asia and Africa may have been caused by a certain blindness in Secretary Dulles' approach. But there is little reason to believe that Mr. Kennan - or Mr. Acheson - would have done much better with this problem. If we had assisted these two revolutions, is it likely that we would have seen the weakening of Western power in the Middle East, the increasing Soviet penetration of Asia and Africa, flourishing anti-Americanism in Latin America and, especially, the increasing neutralism of Asia and Africa? Or, to put it differently, if, like Scrooge, we were given a vision in 1950 of the present world would we not have put these years to much better use? I am sure we would have. Why did we not anticipate these developments?

VALLEY FORGE

Like the years 1929 to 1933 the years from 1950 to 1960 were largely wasted years. Innovation, idealism and empathy might have helped us to get on with the job of fostering free, prosperous and self-governing nations everywhere outside the Soviet camp. Instead we heard lectures about utopianism, about the need for humility, about the immense differences between other societies and our own. These lectures, surprisingly enough, often came from men who had had the strongest admiration for the dynamic policies of the New Deal. But, like President Hoover's homilies, these lectures seemed unrelated to the great problems which the world faces.

What of disarmament? My model, and I hate to confess this, makes me deeply skeptical about the possibilities for disarmament or for the control of nuclear weapons. Schemes of this nature seem to presume the agreement on fundamentals which is so obviously missing. My model suggests that the best way to deal with the nuclear weapons race is an indirect way, namely, to build, by the methods I have suggested, the necessary consensus, to structure the situation in such a way that Russian and Chinese Communists will decide to desert communism just as the Czar's troops decided to desert the Czar.

Our model also indicates that there will be increasing pressure on the United States to adopt a multi-lateral approach, more especially a "work through the UN" approach to the world's political and economic problems. It suggests that, with important exceptions, it would be wise to adopt this approach even where the bilateral approach appears to be more efficient. This "UN approach" will help the world community to develop "social tissue" (Dr. Niebuhr's phrase) and will give the nations "a history and tradition of working together".

We rightly admire the way in which the British granted independence to their colonies, i.e. by establishing representative institutions and by gradually endowing these institutions with more and more responsibility. This approach depended on the assumption that independence was inevitable. This assumption informed and illuminated Britain's entire approach. It helped to make it, on the whole, a substantial success. However if, like the Belgians, you started with a contrary assumption, i.e. that independence was not a goal for the forseeable future, then the British policy would make no sense at all.

I suggest that if you assume, as my model does, that the world is moving toward a world political commonwealth then you will more easily see the advantages in the multi-lateral, "through the UN" approach. If, on the other hand, yours is the power balancing model you will necessarily be quite reluctant to expand the uses of the United Nations.

Let me make clear that I am not suggesting that all problems should be settled by the United Nations. That would be utopianism. The UN is not a world commonwealth and it would be most dangerous to ask it to take over responsibility for problems for which it is presently ill-equipped. The security of the Free World must continue to rest with Western arms for some time to come. It would be most imprudent to act now as if we had already established a world state. But it is of the essence of prudence to try to decide where you want to go and to attempt to make progress toward your goal.

CONCLUSION

I am, then, suggesting that many current models of international relations do not really constitute goals and that, without, a goal it is not really possible to exercise the pre-eminent political virtue, prudence. But, having a goal, it is possible to be prudent, to take seriously Burke's great injunction.

I must see with my own eyes...touch with my own hands, not only the fixed, but the momentary circumstances, before I could venture to suggest any political project whatsoever. I must know the power and disposition to accept, to execute, to persevere. I must see all the aids and all the obstacles...I must see the things. I must see the men. Without a concurrence of these to the design, the very best speculative projects might not only become useless, but mischievous. Plans must be made for men. We cannot think of making men, and binding nature to our designs.

With the kind of goal I have outlined we can help direct researchers and statesmen to more fruitful paths. But we cannot - nor should we want to - bind them too closely to our designs.

VALLEY FORGE
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Civilian Control of the Military : Changing Concept

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960.

Historically the concept of civilian control of the military has been evoked as a response to the fear of praetorianism. As recently as 1949 the first Hoover Commission asserted that one of the major reasons for strengthening the "means of exercising civilian control" over the defense establishment was to "safeguard our democratic traditions against militarism."[1] This same warning was raised in the report of the Rockefeller Committee on defense organization in 1953. While the overriding purpose of the committee's recommendations was to provide "the Nation with maximum security at minimum cost", the report made it clear that this had to be achieved "without danger to our free institutions, based on the fundamental principle of civilian control of the Military Establishment."[2] Finally, during the debate on the reorganization proposals of 1958, senators and congressmen used the theme of a "Prussianized" military staff to attempt to slow down the trend towards centralization in the military establishment.[3]

Despite this imposing support, the historical meaning of the concept of civilian control of the military has little significance for contemporary problems of national security in the United States. In the first place, military leaders are in disagreement over strategic doctrine. Their differences cannot be reduced to a crass contrast between theories of "massive retaliation" and "limited war", however. Air Force leaders who are gravely concerned over the need to maintain a decisive nuclear retaliatory force, are by now acknowledging the need to develop a limited war capability. At the same time, Army leaders are quite frank to admit that a strategy of "flexible response" requires both strategic and tactical power of sizable strength. If these differences appear to be only differences in emphasis, they are nonetheless crucial in a political process within which priorities must be

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1. The Commission on Organization of the Executive Branch of the Government, The National Security Organization, A Report to the Congress, February 1949, pp. 2-3.

2. Report of the Rockefeller Committee on Department of Defense Organization, Committee Print, Committee on Armed Services, 83rd Congress, 1st Session, 1953, p. 1.

3. See, for example, Report No. 1765, Department of Defense Reorganization Act of 1958, Committee on Armed Services, House of Representatives, 85th Congress, 2nd Session, especially pp. 24-33.

established and choices must be made. Without firm agreement on fundamentals, there is little expectation that the military can agree on priorities and control government policy even if civilian authorities abdicate responsibility for basic decisions. The most that can result is a compromise between different military positions.

Secondly, the concept of civilian control of the military ignores two other factors that complicate civil-military relations. On the one hand, the military themselves accept the principle of civilian supremacy; on the other, they have been thrown into a political role in the formation of policy. The resignation of General Gavin over the budgetary restrictions of the "New Look" strategy is a case in point. The General disagreed with the judgment of his civilian superiors but, like General Ridgway before him and General Taylor after him, held his most violent fire until he was out of uniform and freed from the limits of professional restrictions.[4] His case dramatically illustrates the dilemma in which the military find themselves as they move into the center of defense policy-making. Here they have to struggle between the non-partisan tenets of their creed and the requirements of effective participation in the political process. Their advice as experts is not only used by the Executive to bolster its case, but is eagerly courted by Congress and the public as a basis for testing the worthiness of executive action. In one respect the political role of the military tends to dilute their own professionalism. But in another, it affords them more than one opportunity to maintain a balance between their professional code and the individual conscience. The nature of the American political system thus provides an outlet for frustration which, in other settings, has been the catalyst to set off an outburst of militarism.

In its broadest sense, the concept of civilian control of the military means military responsiveness to the policies of politically responsible government. But this meaning, too, needs to be reinterpreted in the light of revolutionary changes that have greatly complicated the formation of defense policy. Preparedness is as much the product of civilian expertise in science and engineering and of civilian decisions on the allocation of national resources as it is of military planning. At the same time, it is very often the military who put defense policy to the test of political accountability by exposing the bases for decisions to congressional and public inquiry. As a result, there is a constant reversal of traditional roles, a situation that has brought civilians and military into a new set of relationships. These relationships have only been reflected in a limited way in recent organizational changes that have strengthened the central agencies of the defense establishment. To appreciate their full significance, it is also necessary

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4. The views of all three Generals have been documented in books they published shortly after they retired: James M. Gavin, War and Peace in the Space Age, New York, Harper & Bros., 1958; Matthew Ridgway, Soldier, New York, Harper & Bros., 1956; and Maxwell D. Taylor, The Uncertain Trumpet, New York, Harper & Bros., 1959.

to understand changes in the character of both civilian and military leadership in defense affairs. Civilians are becoming "militarized" and the military "civilianized" and it is these changes that reflect more clearly than organization alone, a fundamental break with tradition in the evolution of civil-military relations.[5]

The Evolution of Defense Organization

Like many institutions in American political life, a highly centralized, civilian-dominated Pentagon has developed in response to changing forces and conditions. Had the Joint Chiefs of Staff been able to function as a collegial unit rather than as a divided group of service representatives, it is possible that reorganization trends might have taken different directions. Centralization, however, was probably inevitable in one form or another. Increasing defense costs made centralized budgeting and programming a necessity. The bite that military expenditures take on the total federal budget makes it impossible to ignore the impact of defense on the national economy, the government's tax program and the whole range of complex problems of resources allocation. The impact of technology has also been a centralizing factor. Indeed, work on the military applications of atomic energy had already been centralized in the Atomic Energy Commission. But work on missiles had been left in the separate services and the duplication of effort in three competitive programs brought on demands for greater coordination in propulsion programs in the late 1950's. Finally, both these areas of financial management and research and development require skills that are "civilian", in essence, and are not yet possessed by many high ranking military officers. Thus it might be argued that "civilianization", as well as centralization, was inevitable given the nature of the problems that needed to be solved.

The growth of central civilian authority has nevertheless come in stages. The first Secretary of Defense, Mr. Forrestal, had been opposed to the development of a large central staff even after he had come around to accept the concept of an overall defense chief. As a former Navy Secretary he was committed to the retention of strong civilian leadership in the individual services, first, to avoid a situation that might lead to the domination of a single strategic doctrine and, second, to keep civilian authority lodged at the operating levels of the military departments. He insisted that the Secretary "must be free to concentrate his efforts on the establishment of broad policy" and in so doing "must look to the secretaries of the military depart-

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5. For a theoretical statement of the concept of civilian control of the military, together with references to other major analyses of the subject, see Samuel P. Huntington, "Civilian Control of the Military : a theoretical Statement", in Eulau, Eldersveld and Janowitz (ed.), Political Behavior, Glencoe, Illinois, The Free Press, 1956, pp. 380 ff.

ments for the information and data upon which his policy is to be based and then look again to them for the execution of these policies."[6] Within these guidelines, he was reported to want only "a very small executive force for the single Secretary to consist of [a total of] 15 to 25 '$10,000-a-year men' and officers."[7]

The National Security Act of 1947, highly influenced by Forrestal's views, thus created a federation of military departments with little authority in the office of the Secretary of National Defense. In little more than a year, however, Forrestal himself recommended a number of statutory changes that mark the second step in the strengthening of centralized civilian authority. The critical problem he had faced was the absence of any military consensus upon which to develop strategic programs. He therefore sought to develop independent staff at the Defense level, including an Undersecretary of Defense, a Chairman for the Joint Chiefs of Staff and a larger Joint Staff. He also called for greatly clarified responsibility over the military departments to enable the Secretary to settle controversies over the roles and missions of the separate services and the allocation of budgetary resources.[8]

Forrestal's recommendations, largely reinforced by the report of the first Hoover Commission a year later, were the basis for the National Security Act Amendments of 1949 which created a Department of Defense where only a coordinating mechanism had hitherto existed. The Secretary, however strengthened his position became, was nonetheless still forbidden, by law, to encroach upon the "combatant functions assigned to the military services." Congress deliberately used this basic prohibition to maintain the essential identity of the individual services, a tactic that has been retained in subsequent major reorganizations in 1953 and 1958. Nevertheless, this restriction has become less limiting on the authority of the Secretary of Defense as major strategic decisions have turned on problems of weapons development and financial management rather than directly on the controversy over roles and missions.

The reorganization plan of 1953 went another step in centralizing authority in the civilian leadership by creating assistant secretaries of defense with responsibilities in functional areas, such as financial management and research and development. These posts were established with the understanding that

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6. See letter from Forrestal to Chairman Chan Gurney of the Senate Armed Services Committee, reprinted in Hearings before the Senate Committee on Armed Services, 80th Congress, 1st Session, National Defense Establishment, Part 1, p. 185.

7. Testimony of Admiral Sherman, ibid., p. 155.

8. First Report of the Secretary of Defense, National Defense Establishment, 1948, pp. 2-4.

"they should not be in the direct line of administrative authority between /the Secretary/ and the three military departments, but instead should assist in developing policies, prescribing standards, and bringing to the Secretary of Defense information on which he may base his decisions."[9] Under these terms, the authority of the assistant secretaries was ambiguous. Administration witnesses were always cautious to assure congressional committees that the assistant secretaries of defense had no operating authority and were exclusively advisory to the Secretary. While this was theoretically so, actual practice was often to the contrary since they were often in a strong position to recommend that service positions be over-ruled.[10] For that matter, the authority of the Secretary of Defense to delegate powers to his assistant secretaries was confirmed under the 1958 Act, clearing away any ambiguity that might have existed.

The growth of centralized civilian authority has thus been related to the decline in the authority of the service secretaries. Forrestal himself had found at an early stage that the service secretaries could not administer the individual departments and still act as his deputies in the formation and execution of overall policy. As service heads they were obliged to support major positions developed by their military chiefs or risk losing the main leverage they had to be effective in their jobs. The policy process is largely a process of bargaining and persuasion. Without the confidence of the military leaders, a civilian secretary cannot hope to persuade them to alter their views. At the same time, he has little chance to gain their confidence unless he largely supports the position they have developed. He thus plays a dual role, representing the Defense Department at the service level and the military department at the Defense level. Under the pressures of inter-service competition for limited resources and the development of a large secretariat in the Department of Defense, the service secretary has become more and more a spokesman for his service's position and less and less a positive instrument in the formation of policy by the Secretary of Defense.

But by far the greatest increase of authority has devolved to the civilian leadership in the Defense Department because of the inability of the Joint Chiefs of Staff to come to agreed positions on the military requirements of national security. The far-reaching provisions of the 1958 Act were largely in direct response to the wide range of problems raised by service disagreement. Under the Act, the Secretary of Defense can exercise direct authority over unified commands, transfer weapons systems from one service to another and maintain centralized direction of all military research and development through the

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9. Report of the Rockefeller Committee on Department of Defense Organization, op. cit., p. 11.

10. See, for example, the dialogue between Senator Symington and the Assistant Secretary of Defense (Logistics and Supply) in hearings before Committee on Armed Services, U. S. Senate, 85th Congress, 1st Session, Nominations, pp. 12-14.

Director of Research and Engineering. The practical impact of these powers is to give the Secretary considerable influence over the roles and missions of the services which are still prescribed by law within the broad and flexible categories of land, air, and sea forces. The concept of unified commands and the sweeping authority over weapons development now enable the Secretary to bring about de facto unification of the armed services even within the framework of a three departmental system.[11] But to accomplish this, he has a total civilian staff of almost 2,000 - a far cry from the "15 to 25 '$10,000-a-year men' and officers" Mr. Forrestal had wanted less than 15 years ago.[12]

The "Depoliticalization" of the Defense Department

The increasing authority of civilian leadership has not been granted without misgivings. Several aspects of this trend have been viewed with concern: the turnover of civilians in the Pentagon; the inability of civilians to come to grips with problems which have no exact parallel outside the military establishment; the tendency for the Defense Department to evolve into a fourth

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11. Almost two years after the passage of the Reorganization Act of 1958, the Army, Navy, Air Force Journal (May 28, 1960) summed up some of the ways Secretary of Defense Gates " is using the full powers of his office . . . to achieve increased unification within the terms of existing legislation." These included centralization of missile test ranges, centralization of toxicological research, and establishment of an All-Service Defense Communications Agency. In addition, early in 1960, Secretary Gates sent a memorandum to the Chairman of the JCS, stating: "It is requested that I be promptly informed regarding any issue on which a difference of opinion is developing within the Joint Chiefs of Staff. I intend that either the Secretary of Defense and/or the Deputy Secretary of Defense will promptly meet with the Joint Chiefs at such times as they consider the issue in question . . . ." (reprinted in Army, Navy, Air Force Journal, January 16, 1960).

12. This contrast has risen to plague subsequent Secretaries of Defense. Mr. McElroy faced questioning on it during the reorganization hearings in 1958 and offered the following: "I have heard others report to me about the expressions by Jim Forrestal about getting along with 100 people, and that kind of thing. I have also heard that after he got into the job, he found that he needed a great many more. The history is nothing that I am prepared to support because I don't know precisely what did go on there. But I honestly - while I agree with you fully that numbers are not a measure of the importance or efficiency of an organization, I mean large numbers, I wouldn't know how anybody could operate a department of this size and complexity with 100 people." Hearings before the Committee on Armed Services, House of Representatives, 85th Congress, 2nd Session, Reorganization of the Department of Defense, p. 6072.

operating agency of the military establishment; the pre-occupation of Defense officials with budgetary matters; and delays in military programs as result of the need to gain clearances from a thickening layer of "functional" chiefs.[13] Indeed, Senator Henry Jackson has commented that ". . . at one time we worried about a German General Staff setup in the Pentagon. I think we are at the point of a civilian general staff . . . ." Jackson was not, however, critical of the establishment of new duties in the Office of the Secretary, but rather of "a failure to exercise these functions properly."[14]

The problem of "proper" performance in top defense positions is necessarily complex. Many administrators have held top positions over long periods - longer indeed than many military officers who are subject to rotation in assignment at frequent intervals. Others have had equally long tenure although they have hedgehopped from position to position. It has, however, been difficult to attract first-rate people into high defense posts. Charles Wilson, for example, reported that, just before he took over the post of Secretary of Defense in 1953, out-going Secretary Lovett said to him: "Charlie, do not be too critical of some of these men that are here to help you do this job, because in some cases they are the thirty-third men I propositioned to come before I could get anyone."[15] In the final analysis, the caliber of leadership in high positions will depend on the kind of men the President wants as advisers and his willingness to use his persuasive powers to bring them into government. It will also depend, though to a lesser degree, on the pressures the Senate puts on the Executive.

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13. These misgivings are suggested by the questions raised by the Staff of the Senate subcommittee on national policy machinery. See Organizing for National Security, Interim Report of the Committee on Government Operations made by its Subcommittee on National Policy Machinery, U. S. Senate, 86th Congress, 2nd Session, pp. 17-19. The problem of turnover has been the subject of a proposed Senate resolution "that it is the sense of the Senate that nominees appearing before its committee shall indicate their willingness to serve so long as the President desires" (S. Res. 338), 86th Congress, 2nd Session; see also Report No. 1753, U. S. Senate, 86th Congress, 2nd Session, Resolution Expressing Concern of Senate over Turnover in Administrative and Policymaking Posts.

14. Hearings before the Committee on Armed Services, U. S. Senate, 84th Congress, 2nd Session, Assistant Secretaries for Research and Development, pp. 20-22.

15. Hearings before the Committee on Armed Services, U. S. Senate, 83rd Congress, 1st Session, Nomination of Charles Wilson, Part 2, pp. 110-111. For a general discussion of this problem, see John A. Perkins, "Staffing Democracy's Top Side", Public Administration Review, Vol. XVII, No. 1, Winter, 1957, pp. 1 ff.

When the Eisenhower Administration took office in 1953, there was an almost complete turnover in civilian leadership (and, indeed, in military leadership as well). With the exception of the Defense Comptroller, Wilfred McNeil, all of the top Pentagon posts changed hands. This changeover was perhaps more disrupting than usual since it marked the advent of the first Republican president in twenty years. But the turnover was also very deliberate for the new Administration had almost completely divorced itself from the foreign and military policies of the Truman Administration during the presidential campaign. The new President and his chief advisers looked for a loyalty to their own policies that they felt few Truman aides could muster.[16] It is nevertheless instructive to note that by the end of the second Eisenhower Administration most civilian leaders in the Pentagon had spent periods of 4 to 8 years in defense work, if not in the same post.[17] At the same time Thomas Gates, the last Secretary of Defense under Eisenhower, and Robert Lovett, the last Secretary under Truman, were both urging that high defense posts be protected from partisan politics and that both parties agree to maintain effective continuity in the civilian leadership of national security programs.[18]

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16. This was also true in programs outside the field of foreign and military policy. For a discussion of its impact on career executives, see Herman M. Somers, The Federal Bureaucracy and the Change of Administration, The American Political Science Review, Vol. XLVIII, No. 1, March 1954, pp. 131 ff.

17. For example: Thomas Gates, the Secretary of Defense, had served (with one short break) since October 7, 1953, as Undersecretary and Secretary of the Navy, as well as Deputy Secretary and Secretary of Defense; James Douglas, Deputy Secretary of Defense, had served continually since March 3, 1953, as Undersecretary and Secretary of the Air Force, as well as Deputy Secretary; the Director of Defense Research and Engineering, Herbert York, came to this post (and was the first incumbent in 1958) after long experience in defense work with the Advanced Research Projects Agency, various scientific advisory committees, and non-profit institutions engaged in defense activities; Charles Finucane, the Assistant Secretary of Defense for manpower affairs, had served as Assistant Secretary and Undersecretary of the Army for almost four years when (after a short break in service) he was brought back to the post at the Defense level in 1958; similarly, the three service secretaries, Brucker in the Army, Franke in the Navy, and Sharp in the Air Force had all had almost continual Pentagon service for at least five years.

18. In both cases, these views were expressed in testimony before the Senate subcommittee on National Policy Machinery and were largely supported by the testimony of other witnesses, particularly James E. Perkins, John Carson, and Roger Jones. See Hearings before the Subcommittee on National Policy Machinery, Committee on Government Operations, U. S. Senate, 86th Congress, 2nd Session, Organizing for National Security, Parts II and III. It will be of interest to see how far these recommendations are followed if there is a change of party in the Executive Branch in January 1961.

The recommendations of Secretaries Gates and Lovett are symptomatic of the change that has slowly been developing in the character of civilian leadership in the Pentagon in spite of the sharp setback in 1953. It is marked by what might be called a "depoliticalization" of the Defense Department. The process of "depoliticalization" is enhanced by the fact that appointive posts in the federal departments do not all fall in the same category despite a common tendency to classify them all as subject to the claims of patronage. Indeed, "patronage" appointments are less the rule than the exception in the areas of foreign and military policy. In these domains the motivation of national interest operates to counteract the forces of geographic distribution, party balance and pressure groups that dominate top appointments in other departments.[19] Pentagon appointments that might be termed "patronage" are generally restricted to those agencies where special groups, such as the national guard and organized reserve, can command a voice. In other areas, such as military procurement and logistics, where pressure groups have a stake, the "conflict of interest" clause operates to forestall appointments from among those very men whose private pursuits are involved; either the Senate will object to their appointment or they themselves will be reluctant to run the public scrutiny of their personal affairs.

Most appointive posts in the Pentagon break down into three general groups.[20] There is, first of all, the Secretary of Defense and his immediate staff. Here the needs and thus the will of the President himself will certainly dominate. For the prime importance of the Secretary is as a top presidential adviser.

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19. Patronage proved to be a vexing problem when the Eisenhower Administration took office in 1953 after twenty years of Democratic rule. Nevertheless, very early in the game Secretary Dulles was reported to have made it clear that "his department could not be run on the basis of patronage", Robert J. Donovan, Eisenhower, The Inside Story, New York, Harper & Bros., 1956, p. 98. It seems that, by the end of the second Eisenhower term, the same was considered valid for the Defense Department (see reference above to testimony of Secretary of Defense Gates). For a general discussion, see Harvey C. Mansfield, "Political Parties, Patronage, and the Federal Government Service", in The Federal Government Service : Its Character, Prestige, and Problems, The American Assembly, 1954, pp. 81 ff.

20. The following discussion borrows from Wallace S. Sayre, "The Political Executive in the National Government: The Constitutional and Political Setting", prepared for the Conference on the Political Executive, Woodrow Wilson School of Public and International Affairs, Princeton University, 1956, pp. 23-24 (mimeographed). The literature on executives for government is particularly pertinent to the problems discussed here. See, for example, the report of the task force on personnel and civil service of the second Hoover Commission dated February 1955; Paul F. David and Ross Pollock, Executives for Government, The Brookings Institution, 1957; and Marver H. Bernstein, The Job of the Federal Executive, The Brookings Institution, 1958.

His constant occupation is to serve as a deputy to the President in the performance of his constitutional duties as commander-in-chief of the armed forces. Indeed, as the problems of national security have come to absorb so much of the President's time and energy, the Secretary of Defense has come to be one of the most prominent members of both the President's cabinet and his inner circle.

But below the Secretary and his personal staff are a group of appointive posts at the Defense and military department levels, in which functional or "program", rather than constitutional or presidential, responsibility is emphasized. These include posts in the fields of financial management, manpower, and procurement and logistics. What is often as necessary as practical experience in the subject field itself, is an ability to manage complex enterprises and a deep understanding of the political and governmental processes. Thus, experience in public service is of prime importance. Men chosen for these posts might come from several sources. They might be men who possess these qualities and are also important figures in the President's party; their appointment can thus perform two functions at once - bring a professional hand to high office and meet the party's requirement for patronage. They might also be men whose identity with one of the major political parties has been incidental but whose experience with problems of public policy has made them wise selections for office regardless of party. Finally, they might be high-ranking civil servants whose records are outstanding and who are willing to give up the security of tenure for the political risks of appointive positions. Where a choice is possible, the determining factor will be the importance with which the President and his principal advisers view the balance of interests that are involved.

Finally, there are appointive posts that require a high level of specialized expertise but cannot be included within civil service categories. This is especially true in the field of research and engineering. The incumbents will often act as policy advisers and, even within the bounds of their own professional integrity, must be in basic agreement with the political dimensions of the President's defense program. At the same time, the civil service cannot provide the high degree of expertise that is required for top direction. The background of experience which the evaluation of complex weapons systems requires, can rarely be gained by working in government agencies. It is more usually found in men whose prior experience has been developed in university and industrial laboratories.

Several factors can thus be identified as vital qualifications for high Pentagon posts below the Secretary of Defense himself: the benefit of government experience; the need for expertise; and the desirability of continuity. These traits have been increasingly recognized and their recognition is operating to develop a "depoliticalization" of these posts where a general political consensus on the broad lines of defense planning can be found. "Depoliticalization" nevertheless, has limits even where a broad consensus exists. National security issues cannot (and indeed should not) be entirely taken out of politics. Top presidential advisers must be prepared to defend the choices that they make before congressional and public criticism. At the same time the President needs to have the alternative of changing his close advisers if the sense of purpose

and the support that he feels is necessary to his program are missing. Capable men available for such posts, no matter how broad the recruitment sources are becoming, will, moreover, continue to be few and many of those who agree to accept political responsibilities will be under pressure to return to private life. For that matter, a periodic change in the top echelons is desirable to bring a continual freshness and critical direction to government administration. Thus, no matter how far "depoliticalization" goes, political appointees will not always be able to perform the functions of continuity and stability in government that are the principal contributions of career professionals.

"Depoliticalization" is, however, only one of the characteristics of the larger trend towards a professionalization of civilian leadership in defense affairs. Professionalization is taking other forms as well - the influence of career executives in the development of major policy decisions, innovations in administration which have brought outside experts into government through a variety of institutional devices, and a growing interest in military affairs among civilians outside government. All of these, taken together, contribute to the changing character of civilian leadership that is, in turn, influencing the character of civil-military relations.

The Professionalization of Civilian Leadership

The importance of continuity and stability in government is emphasized when the nature of the policy process is clearly understood. Policies are usually developed with a long history of conjecture, false starts and negotiation. Very often they take shape from a series of operational responses or the byplay of a number of viewpoints rather than a single breakthrough of brilliant analysis. Within such situations, the influence of careerists, military and civilian, is enormous. It is equally impressive in moments of crisis when only professionals have the background and experience to respond quickly. The military professionals wield their greatest influence within the military departments; a large and burgeoning staff of civilian careerists exert similar powers in the Department of Defense. They perform staff work in connection with establishing budgetary and manpower priorities, supply the background material for new programs and have usually developed a network of informal contacts that make them invaluable in inter-departmental negotiations. Indeed, General Gavin recalled (perhaps with some bitterness) that ". . . the Civil Service employees . . . in the Department of Defense . . . probably have more impact on decision-making . . . than any other individual or group of individuals, military or civilian,"[21]

The slim dividing line that divides policy from administration and the influence of career professionals on decision-making are familiar themes in the literature of public administration.[22] In the Defense Department, their influ-

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21. Gavin, op. cit., p. 166.

22. See, for example, Paul H. Appleby, Policy and Administration, University

ence has been increased by the tendency to seek solutions to problems at a technical level in order to minimize differences over vital matters of policy. In such cases, the guides for policy become efficiency and empirical verification rather than intuition and inspiration and, in any such atmosphere, technicians and arbitrators play a critical role. Such tactics often reduce policy to a compromise between opposing positions, a practice that is often stultifying. In many cases it is nevertheless an inevitable consequence of policy-making within the democratic process, particularly in the field of national security. For within the goldfish bowl of American politics, there is a limit to the risks a political leader is willing to take in approving defense programs that can be argued in terms of national survival and for which there is no indisputable solution.

But like the "depoliticalization" of appointive posts, there are limits to the contribution that increased civil service influence can make to the professionalization of civilian leadership in the Pentagon. Some of these limits have already been suggested. For one thing, few civil servants possess the degree of specialized expertise that is required for technical staff work in fields such as research and engineering. Nor, for that matter, does the bureaucracy offer the environment in which careful study and reflection on basic problems, such as strategic doctrine, is encouraged and indeed rewarded. At the same time, there is little chance that the top layer of the American civil service can be transformed into an administrative class like that in Great Britain; neither the social structure nor the political system to support such a class is present.[23]

Within the special context of American governmental institutions, a series of innovating techniques have therefore been developed to bring professional competence to bear on matters of public policy where neither political nor career executives can fully meet the demands. They include ad hoc and standing advisory committees, contractual arrangements for consultative services, the assignment of broad investigations or actual operations to outside institutions, and government-financed independent agencies set up outside the formality of the bureaucracy.[24] These administrative techniques perform a number of functions.

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22. cont. of Alabama Press, 1949. For an earlier statement on this issue, see Carl J. Friedrich, "Public Policy and the Nature of Administrative Responsibility", Public Policy, 1940, Cambridge, Harvard University Press, pp. 3 ff.

23. Several of the essays in J. E. McLean (ed.), The Public Service and University Education (Princeton, 1949) are concerned with this issue. See particularly Rowland Egger, "A Second View: An American Administrative Class?" pp. 205 ff.

24. For a general discussion of the development of such innovations in government administration, see Don K. Price, "Creativity in the Public Service", Public Policy, Vol. IX, 1959, Cambridge, Harvard University Press, pp. 3 ff. For a discussion of some of the aspects of Defense Department contracting

They bring creativity to the public service in areas where it is often discouraged by the routinization of bureaucratic procedures or the dangers of political disagreement. They offer political executives (and congressional leaders) alternative sources of expert advice to the career services, civilian and military. They permit the kind of experimentation, reflection, flexibility, and deep probing that the complex problems of national security require but that the federal service cannot completely accommodate because of its size, its need for standardization, and its emphasis on current operations.

To a very great extent the strides that have been taken in recent years to develop new modes of government administration have been forced by the demands of technology. The scientific programs during the second world war and the industry-based programs of the Air Force in the post-war years established precedents for government contracting in areas that now extend beyond technological projects to projects in the social and behavioral sciences. Each of the services has created a "think" organization to which it can farm out problems - the RAND Corporation of the Air Force, the Operations Research Office of the Army and the Operations Evaluation Group of the Navy. Within the Department of Defense a variety of advisory panels are available to the Secretary and his assistants - on research and development, on psychology and the social sciences and on education and manpower. In addition, the Institute of Defense Analyses has been set up "to create machinery for putting a segment of the nation's intellectual resources more effectively at the disposal of the national security effort."[25] Originally established in connection with the evaluation of competing weapons systems, the scope of the Institute now encompasses broad areas of military strategy where the support for judgments on weapons evaluation is very often to be found. Indeed the close connection with strategic issues has been the link that has extended research on military operations into the far reaches of national policy.

These innovations in administration project the professionalization of civilian leadership in defense far beyond the confines of government itself. That they extend as widely as they do is, in many ways, an indication of the response of industry, science and private scholarship to the problems of national security. Like government-sponsored research, research in industry has begun to go beyond technical subjects. General Electric, for example, publishes a Defense Quarterly that is devoted to the broad issues of technology and foreign and military policy. It has also established a "think" group of its own as have other corporations such as General Dynamics, IBM and many of the large aircraft companies. While most of these "in house" divisions are set up for scientific research and development, many of them dig into military and social problems

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24. cont. for advisory and consultative services, see Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 86th Congress, 2nd Session, Department of Defense Appropriations for 1961, Part 7, pp. 164-196.

25. Annual Report II, Institute of Defense Analyses, 1958, p. 1.

affected by technological advances. At the same time, many industrial companies contract out their research activities with institutions such as the Stanford Research Institute, a non-profit corporation which has moved into the fields of military and foreign policy in the wake of its primary interest in the frontiers of technological change.

In addition, since 1950 there has been an outpour of books and articles on national security from scholarly sources.[26] Some have actually been made possible through association with Defense Department projects or under contract with congressional groups investigating various aspects of the defense program. But a very high number of these efforts have been taken on private initiative, with or without foundation or university support. The subjects with which these studies have dealt have ranged from the broadest issues of military strategy to more specialized problems of military organization and education. They include Kissinger's "Nuclear Weapons and Foreign Policy", Osgood's "Limited War", Huntington's "The Soldier and the State", Brodie's "Strategy in the Missile Age", the books by Walter Millis, the monographs of the Princeton Center of International Studies, the studies of the Rockefeller Brothers Fund and the volumes that have come out of the American project conducted at the Center for International Studies at the Massachusetts Institute of Technology. In all cases, these works have plunged deep into areas where military men once claimed a monopoly. Indeed there are indications that some military leaders are concerned that "there has been too little solid contribution from military pens to national security policy thinking for this new age . . . ."[27]

The practical consequence of all of these activities is that professional advice, studies and investigations on complex military issues are being made available to responsible officials from sources other than the military themselves. Civilian leaders need no longer rely entirely on the military services for the bases for policy decisions. Their own experience in service, the solid contribution of career professionals and the wide new sources of research and reflection, together with the multi-dimensional nature of defense problems, permit them to be more critical, more questioning and more constructive in their own right. Needless to say, all that has been discussed are tendencies, trends

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26. See Laurence I. Radway, The Study of Military Affairs, prepared for delivery at the 1958 Annual Meeting of the American Political Science Association (mimeographed).

27. Col. George A. Lincoln and Col. Richard G. Stilwell, "Scholars Debouch into Strategy", Military Review, Vol. XL, No. 4, July 1960, p. 70. See also Captain Robert P. Beebe, "Guardians of Sea Power", United States Naval Institute Proceedings, Vol. 86, No. 6, June 1960, pp. 27 ff. The trend that is suggested here seems to contradict Bernard Brodie's thesis that "any real expansion of strategic thought . . . will . . . have to be developed largely within the military guild itself." (Strategy in the Missile Age, Princeton, 1959, p. 9). Indeed, one might say that Brodie's own pioneering work refutes his prognosis.

that can be perceived as we analyze the course of civil-military relations during the last ten years. Nevertheless, it seems safe to predict that these trends will continue to gain momentum - the "depoliticalization" of appointive posts, the influence of career executives, innovations in government administration and an interest in military affairs among writers, scientists and scholars. They are also bound to contribute to a growing professionalization of civilian leadership in military affairs and, in turn, this professionalization will have important repercussions on the nature of civil-military relations.

The Changing Character of Military Leadership

The significance of the professionalization of civilian leadership cannot be judged without some consideration of the changing character of military leadership. When General Maxwell Taylor retired in mid-1959, a veteran Washington reporter said that his retirement marked "the point at which the Old Army is drawing to the end of its mission - and even of its relevance." He called Taylor "the last great captain of the old hunters . . ." and his successor, General Lyman Lemnitzer, "an intellectual, a staff officer of vast experience, a kind of professor of the new kind of war."[28] The contrast is perhaps over-drawn for it is difficult to think of the military without its "heroic leaders", left to the impersonal calculations of the "military managers."[29] It nevertheless catches the essence of a fundamental change in the character of military leadership.

Military leadership is changing under the impact of two forces: the revolutionary developments in weapons technology; and the close relationship between military programs and foreign and economic policies. The management of a missile program or a test range, the constabulary duties of an overseas assignment, the pseudo-diplomatic function of a military assistance advisory group, the planning involved in a Pentagon or a NATO slot - these are the tasks for which the military must prepare the officers of the future. At the same time, the threat of war, total, nuclear, limited or conventional, and the demands that open hostilities make on military leadership are ever present. Thus the old attributes of "heroic leaders", the qualities of discipline, courage and command ability, cannot be forgotten. In this respect, the new responsibilities of military leaders have not so much altered their fundamental make-up as they have added new dimensions to their character and made them more complex human beings. This new complexity is being reflected in a number of changes in the military profession. Three of these are particularly important: the broadening base for officer recruitment; the development of higher military education; and new

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28. William S. White, "The End of the Old Army", Harper's, June 1959, pp. 82-85. The contrast might have been more apt had Lemnitzer been compared with General Ridgway who was wholly a soldier's soldier while Taylor has certain professorial features of his own.

29. The terms in quotations are borrowed (as is much that follows) from Morris Janowitz, The Professional Soldier, Glencoe, Ill., The Free Press, 1960.

policies for selection and promotion to higher rank.

To a large extent, the broadening base for officer recruitment is a matter of arithmetic. In recent years the services have had to have more than 40,000 new officers every year with a good percentage of these needed on a career basis. At the same time, the service academies graduate only about 1,500 new second lieutenants and ensigns. As a result, the services have had to begin to look to other sources for career officers, particularly civilian colleges and universities. This development has more than quantitative significance, however. It is also qualitative. The broadening recruitment base for young officers is bringing into the services men with new outlooks and new areas of technical competence that serve to meet the widening range of military responsibilities.[30]

The elaborate structure of higher military education is also responding to the broadening character of military responsibility. Curriculum changes in undergraduate programs at the service academies and in military programs in civilian colleges and universities are moving in two directions: first, they are incorporating new material to expose the students to the expanding technology that is making such an impact on military life; and, second, undergraduate courses are becoming less vocationalized and are taking the form of preprofessional education to lay a solid intellectual base for future career development.[31] At the post-commissioning schools - from the command and staff colleges through the service war colleges to the Industrial College of the Armed Forces and the National War College - there is an increased emphasis on the problems of international politics, the dilemmas of war and peace brought on by nuclear weapons, the impact of defense on the national economy and the complexities of life in a world of allies, international organizations and uncommitted nations. There are still weaknesses in military education: there is tendency to be highly technical and vocational, even in dealing with social science material; service-organized programs also tend to be parochial, emphasizing the narrow views of the service itself; and the image of the world scene that is projected in military teaching is static and over-simplified. The advancements in the last fifteen years have nevertheless been striking and have taken military education far beyond the traditional emphasis on "loyalty, precedent, specific technical skill, and a gentlemanly code of conduct."[32]

Traditions, however, die hard. In the transition from one generation of military leaders to another, the qualities of the "heroic leader" continue to

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30. Gene M. Lyons and John W. Masland, Education and Military Leadership, Princeton, 1959, especially Chapter I.

31. Ibid., Chapters VI and VII.

32. John W. Masland and Laurence I. Radway, Soldiers and Scholars, Princeton, 1957, p. 5. This work is a study of the response of military education to the widening policy role of military leadership.

have primary importance and significance for those older officers who grew up in the "old Army", in the "black shoe Navy" or even in the "propeller-driven Air Force." These are the officers, moreover, who, in the mores of the profession, control the machinery for selection and promotion. Here the struggle between the old and the new takes place. While assignments to the war colleges and long tours of duty in technical posts seem to be good preparation for the new roles military men are undertaking, they are not always the best routes to higher rank. Loyalty, length of service and the number of tours on sea and command duty are very often the qualifications that members of a military selection board look for. A few years ago, the Secretary of the Navy, in an attempt to break down these traditional barriers to advancement, instructed the selection board to accelerate the promotions of officers who were "head and shoulders" above their colleagues. The reverberations of these orders are still shaking the Navy's high command.[33] Accelerating promotion means advancing officers in grade because of "potential" rather than actual performance. It thus involves an exercise of judgment about human behavior, as well as future military requirements, that is, at best, difficult to make. It is more difficult during a period when the old consensus on military qualities is breaking down and a new concept of military leadership is in a state of transition.

More recently, the Secretary of Defense, in December, 1959, issued a directive that "all officers . . . will serve a normal tour of duty with a Joint, Combined, Allied or OSD /Office of Secretary of Defense/ Staff before being considered qualified for promotion to general or flag officer rank." Significantly, the directive makes an exception of Army and Air Force officers "whose proposed advancement and qualifications for promotion are based primarily upon their scientific and technical achievement and proposed utilization in that specialty."[34] This emphasis on planning and technical experience and the deemphasis on parochial views were also underscored in the instructions of the Secretary of the Navy to the Flag Selection Board in 1960. Acknowledging the traditional concern for "a thorough sea-going background in the Line of the Navy", the Secretary brought the Board's attention to the need for "high performance on the planning level and a keen discernment of future operational requirements." He then went on, at some length, to explain that "the explosive technology of our modern weapons systems requires a high degree of concentration and knowledge in particular areas and precludes, to a great degree, the rapid rotation from job to job of many of our most outstanding officers for the purpose of qualifying them

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33. See Vice Admiral L. S. Sabin, "Deep Selections", United States Naval Institute Proceedings, Vol. 86, No. 3, March 1960, pp. 46 ff; also the large number of comments on Admiral Sabin's article in the June 1960 issue of the Proceedings (Vol. 86, No. 6), especially Admiral Carney's letter, pp. 104-106.

34. Department of Defense Directive 1320.5, reprinted in Army, Navy, Air Force Journal, December 19, 1959. For a summary of the reaction of the services to this directive, see the article (p. 1) entitled "pentagon Orders New Barriers to General and Flag Ranks" in the same issue.

in all phases of naval warfare in the pattern of the past."[35]

Both these actions reflect the concern of civilian leaders with the new dimensions of military leadership. Nevertheless, however "civilianized" military officers might become, the profession itself will continue to be anchored in the distinct nature of its trade, the process that has so succinctly and meaningfully been called the "management of violence" by Harold Lasswell. And, in the fulfillment of their mission, the military will continue to be highly influenced by the particular tools of their craft. Indeed, without this distinction what is the meaning of the military profession as a separate group in society? and what do military leaders have to offer that physicists, engineers, diplomats and economists cannot do to meet the requirements of national security? The answer, obviously, is nothing. At the same time, within the framework of its primary and unique contribution, the military profession is dramatically changing. At the moment, it is in a state of transition from the old to the new with the dimensions of the new still unformed, still taking shape, still resembling the contours of an earlier day.

Toward a New Concept of Civil-Military Relations

The nature of civil-military relations is thus being changed through the strengthening of central organization in the Department of Defense, through the professionalization of civilian leadership and through the broadening character of the military profession. These trends might also be expressed as the "militarization" of civilians and the "civilianization" of the military. When extended to their logical conclusion, they suggest new relationships between civilians and military based on a more complex division of labor than has heretofore existed. These relationships, however, are responsive to the new shape of national security in which military affairs are no longer a monopoly of the military and a clean-cut division between matters of war and peace, between foreign and military policies, is a false and misleading notion.

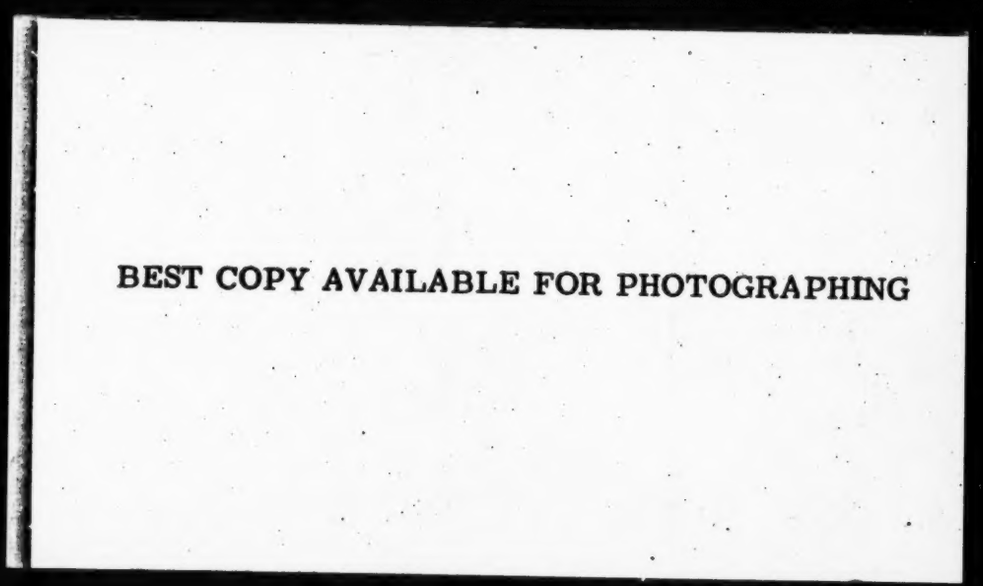
In these changing circumstances, it is as essential as ever that defense planning be attuned to the broader perspectives of national policy. Civilian control of the military is no longer the most meaningful means to this end, however. We need to be concerned with the whole complex of professional direction in defense planning and the dilemma of relating the problems of security to the goals and values of national policy. In this task there are limits to what organizational techniques can accomplish. The spectrum is too broad. There is, moreover, the danger of accepting institutional devices as a solution without pressing forward in other directions as well. These include arousing enthusiasm for public service in the leading professions in our society,

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35. Dispatch from Secretary of the Navy William B. Franke to Admiral Herbert G. Hopwood, President of the Flag Selection Board, reprinted in the Army, Navy, Air Force Journal, July 16, 1960.

developing a sense of the stakes involved in national security among the general public, encouraging the study of foreign and military policy in educational programs, strengthening the civil service, urging new recruitment and educational standards for military careers and continuing innovation in government administration. Indeed, in this context the purpose of organization is not so much to control as it is to create the machinery through which to bring the full force of our intellectual resources to bear on the complex issues we have to meet.

The incredible difficulty of these issues hardly need be explained. Under the tense conditions of continued international rivalry, a major task of American statesmanship will be to maintain restraint in using force even though, "from a military point of view", an offensive strategy may offer increasing advantages. This restraint will require a broad view of national security, an awareness of the integral nature of diplomatic, economic and military programs and an understanding of the limits of force in an age of nuclear weapons and intercontinental delivery systems. The wisdom and patience with which we approach these problems will, to a large degree, depend on the way the men, civilian and military, who influence the direction of the defense establishment, accept their own responsibilities.


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PATTERNS OF INFLUENCE IN THE U.S. SENATE: FIVE APPROACHES

by

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

"It's organized just like a string of sausages," one lady lobbyist has said of the United States Senate. "Its lack of a chain of command was quite a shock to an ex-bureaucrat like me." A Capitol Hill journalist, whose acquaintance with the Senate has been both long and intimate, argues quite the opposite. "The Senate," he says, "is essentially a hierarchical institution."1/

Lobbyists and journalists are not the only persons who propagate contradictory views of the influence structure of the United States Senate. The senators themselves are of several minds about the matter. Political scientists -- never too clear when discussing "influence," "power," "authority" and related concepts -- have not greatly clarified the picture. Recently there has been a great deal of talk about influence in the Senate, but almost all of it has been based on little more than gossip and guesswork.

I wish that it were within my power to rectify this situation here and now. Unfortunately, but not surprisingly, it is not. No one is likely to present a scientifically adequate analysis of influence patterns in the Senate for some time to come. But the title of this paper is not entirely aspiration. It reflects my belief that we are making progress toward this goal.

THE CONCEPT "INFLUENCE"

One of the most encouraging signs, has been a number of recent efforts to clarify the concept of influence itself. The term is still not without ambiguities, both in every day usage and scientific discourse. Yet the writings of Dahl, March, Simon, Lasswell, Shils, and others display a heartening consensus about the concept.2/ Ignoring relatively minor differences in emphasis, they all seem to define influence in much the same way:

> "A" has influence (or power) over "B" to the extent that he can get "B" to do something that "B" would not otherwise do.3/

Moreover, these same theorists argue that a complete description of an influence relationship should include information upon at least five things:

1. The description should specify what individual or group has influence.

2. It should specify the base of this individual's or group's influence, that is, the resources and techniques at the influential person's command.

3. It should clearly indicate the individuals and groups who are influenced.

4. It should specify the amount of influence that "A" has over "B."

5. It should specify the scope of influence, that is, the kinds of situations, issues, and actions in which "A" has influence over "B."

The trick which faces those of us who prefer to muddle along rather close to the data is to invent research procedures which will isolate, measure, and describe influence in the Senate without doing too much damage to this definition. This is an extraordinarily difficult task, one which calls for both insight into Senate ways and methodological sophistication.

What I propose to do in this paper is to look at five different approaches to the study of influence in the Senate and to compare these with each other and the theoretical standard already proposed. Perhaps by examining the problem in this way, I shall be able to stimulate discussion and (even more important) thinking about this challenging research problem.

THE POSITIONAL APPROACH

The traditional approach to the study of influence in the Senate has been to assume that senators in formal positions of leadership or authority are the real influentials in the chamber.

In our desire to be "realistic" and "behavioral," it is possible to dismiss this approach too quickly and wholeheartedly. I suspect, for example, that this has been done by some students of "community power structures" who appear to delight in "proving" that local politics is not really run by party and governmental officials, but by unseen influentials who pull the strings from behind the scenes. Some of the recent discussions of the Senate

"club" display a similar bias in favor of the inside-dopester's belief that things are never as they seem. Moreover, as we shall see, recent research and unsystematic observation seem to point to the conclusion that, most of the time, the real influentials in the Senate are its formal leaders.4/

Nonetheless, the positional approach, used without other indicators of influence, is both conceptually and empirically unsatisfactory. It confuses a base of influence with its actual existence. It tells us nothing about the amount, domain, or scope of the influence it assumes. Moreover, we know from unsystematic observation that incumbents of the same formal positions differ widely in their influence or power, that formal leaders have more influence with some senators than others, that their influence varies at different times and in different situations, and that some men without formal positions of authority are powerful in the Senate. We need to do better than the positional approach and I think we can.

THE VOTING BLOC APPROACH

The second approach to the study of influence in the Senate, is the voting bloc approach. Senators are arranged into groups -- generally using the Rice-Beyle cluster bloc method or Rice's index of cohesion.5/-- with similar or nearly identical roll call voting records. It is assumed that this grouping is the result, at least in part, of the exercise of intra-Senate influence.

The basic limitation of this approach is, of course, that it neither demonstrates the existence of intra-personal influence nor tells us who influenced whom. Furthermore, it is based upon a single type of senatorial action (roll call voting) which may not be as important or as revealing as that occuring during earlier stages of the legislative process. An act of influence always involves some time-lag between stimulus and response; any analysis of roll call votes is unable to capture this time sequence.6/

Nonetheless, the cluster-bloc approach when employed by an imaginative student, and when combined with other systematic evidence, permits the drawing of important inferences about patterns of influence in the U.S. Senate, as Truman's Congressional Party: A Case Study demonstrates. It falls rather short of our conceptual ideal, but it has a cumbersome utility.

THE ATTRIBUTION APPROACH

The third approach is that of influence attribution. So far as I know, it has only been employed in one unpublished paper on the Senate7/; but its great popularity in other areas of political science suggests that it is just a matter of time before it is applied to Congressional research, too.

The attribution procedure is simplicity itself. The researcher merely asks the senators, or a panel of presumably knowledgeable "experts," to rate the members of the Senate in terms of their "influence," he adds up these nominations, and assumes that the more times a senator is mentioned, the more influential he actually is.

Time does not permit a full scale critique of this approach.8/ Let me merely comment upon several of its more obvious limitations when applied to the Senate.

First of all, a power attribution study of the Senate must either be based upon interviews with senators or on the ratings of a panel of experts. In the first case, I doubt that it is possible to attain rankings from a genuine random sample of senators. Even if, as the result of almost fantastic diligence, this could be achieved, I suspect that the level of access achieved with different senators would vary so widely that the results would be of dubious value. Techniques developed in sample surveys of the general population are not always appropriate for gathering data from high prestige respondents: I suspect the tightly structured interview is one of these.9/ In the second and more likely case of reliance upon a panel of experts,10/ who is expert enough to pick the experts? As Walter has written: "Only if the researcher already knows the identity of the powerful is he able to defend the expertise of his panel. And, if he already knows who they are, why use nominators?" 11/

Even if these dilemmas are ignored, a number of other crippling debilities of the power attribution approach remain. The raters, be they senators or "experts," supply their own definition of influence. One might as well "define such terms as 'atom,' 'proton,' 'quantum' and the like by asking non-physicists what the concepts designate and then taking the most frequently mentioned answers as definitive." 12/ To assume, on top of this, that nominations obtained in this matter are additive, and that a senator's influence is directly proportional to the number of times he is mentioned as "influential" is absurd.

Finally, the size and shape of the hierarchy of "influence" one obtains by following this procedure is partly an artifact of the procedures followed. If ten "experts" are asked to name the

three most "influential" senators, the maximum number of "influential" senators one can find is thirty. If the same ten experts are asked to name the ten most "influential" senators, it is possible to find as many as one hundred "influential"senators. Obviously, the picture one obtains of Senate power structures, using these two procedures, could vary widely. Then, too, if one merely asks for overall influence rankings, a single-peaked pyramid of power is obtained. If one asks about influence on specific issues or in specific situations, a large number of competing power structures may be found.

Whenever an operational equivalent to a theoretical concept is devised, the concept loses some of its theoretical virginity in the process. But the attribution approach clearly goes much further in watering down an already fluid concept than is either necessary or desirable. It is operationalism run-riot.

VOTING ON THE WINNING SIDE

A fourth and highly ingenious approach to the study of influence in the Senate has been proposed by Robert Dahl.13/ His operational definition of influence is the difference between the proportion of bills passed when "A" favors them and when "A" opposes them.

Conceptually this approach is clearly preferable to the others discussed so far. It should be able to tell us who the power holders are, to provide a rank ordering of senators in terms of their influence, and to specify the scope of their influence.

However, as applied by Dahl and his associates, it possesses a number of limitations as an operational measure. Most of them flow from Dahl's reliance on roll call votes as an indication of the senators' position prior to the roll call.

First of all, this procedure presents some logical difficulties.

> "...Although in most cases [MacRae and Price have written in their value critique] it is reasonable to assume that "A's" vote corresponds to his activities before the vote was taken, this assumption must be made for all senators and not just for "A." This gives no logical basis for any measure of change in attitude; for if all voting "yea" are presumed to have favored the measure previously and worked for its passage (and the converse for "nays"), then there is no opportunity for anyone to exercise any "power" to change anyone else's stand." 14/

Secondly, the use of roll call votes exclusively as a means of measuring influence (and the resultant failure to establish any time sequence of actions) results in over estimating the influence of what Dahl has called the "chameleon" -- the senator who estimates how the Senate majority will vote and then votes with the majority. I doubt that such an animal has ever existed in pure form, yet there is little doubt that the probable outcome of Senate roll calls does affect how senators vote. Examine for a moment the evidence in Table I, which shows the number of senators voting on the losing side in all non-unanimous roll calls held during the 83rd and 84th Congresses. Obviously most non-unanimous roll calls were won by relatively slim margins; the losing side was usually quite large. Roll calls in which a small number of senators hold out against the preferences of the over-whelming majority of their colleagues were relatively infrequent occurences.

But some senators obviously do vote against the preferences of a vast majority of their colleagues from time to time. The frequency with which different senators do this varies widely (Table 2). More than half of the senators who served during the entire 83rd and 84th Congresses did not vote once with a minority of five or less. On the other hand, Senator Langer held out against the overwhelming sentiment of the chamber nine times; Senator Malone, seven times; Lehman and Morse, five times each; McCarthy, Williams, and McCarran, four times each. What does this ill-assorted crew have in common? I suggest, that each of these men placed an unusually low value upon the approval of their legislative peers, that they tended not to conform to Senate folkways, and were therefore willing to break the unwritten rule against "grandstanding." 15/ Be that as it may, a little bit of "chameleon" blood seems to flow in the veins of a substantial majority of the senators.

A third limitation of the Dahl measure is that it fails to take account of the fact that most senators specialize in only a few policy areas and that in policy fields outside of their focus of attention they rely heavily upon the advice and counsel of their specialist colleagues. "I try, and I think most other senators try," one senator has said, "to read the Report on a bill before voting on it. But I must admit that I have voted on many hundreds of bills solely upon the basis of what other senators told me about them." Another senator -- this one a Southern Democrat -- said: "If Senator George tells me that he has studied a bill and that it's good legislation, I'll vote for it without knowing a damned thing about it. And so will a lot of other senators." 16/ Advice-giving and advice-taking is a vital part of the Senate in operation. Without this division of labor -- which parallels but which is not identical to that of the committee system -- the Senate would long since have broken down. But this also means that the advice-givers' and advice-takers' voting records are likely to be similar or identical. To the extent that this is true, the Dahl measure does not discriminate between the influential and the influenced.

Table 1

NUMBER OF SENATORS VOTING ON THE LOSING SIDE,
ALL NON-UNANIMOUS ROLL CALLS, 83rd and 84th Congresses

Number of Senators Voting on Losing Side	Number of Roll Calls
1-4	34
5-9	33
10-14	29
15-19	46
20-24	61
25-29	41
30-34	71
35-39	68
40 plus	74

Table 2

FREQUENCY WITH WHICH SENATORS VOTE WITH
SMALL MINORITIES (5 or Less), 83rd and 84th Congresses

Number of Times Senators Voted with Small Minorities	Number of Senators
None	48
1	16
2	6
3	3
4	3
5	2
6	0
7	1
8	0
9	1

A final difficulty of the Dahl measure of influence is that it tends to exaggerate the power of senators whose policy positions are near the center of the ideological range on a particular issue. Numerous studies have shown that the senators' roll call votes may be arranged along a one-dimension continuum in a given subject matter area.17/

> Insofar as this is true, those legislators nearest the median of the distribution of legislators along this continuum will necessarily have the highest indices of power, in the sense of Dahl's operational definition. This will depend only on their taking certain positions relative to their colleagues, as a result of their own values or of constituency pressures, and not by their being "chameleons" or "satellites." 18/

Figuring the frequency with which the senators would have voted on the prevailing side on the basis of their ideological positions alone, and then correlating this with the Dahl rankings, MacRae and Price obtained a rank correlation of +.57. "Thus to a considerable extent the 'power' ranking (of Dahl and his associates) can be accounted for by scale scores." 19/ This may mean that senators in a middle-of-the-road position, with respect to the attitudes of their colleagues, are in the best position to influence others. Or it may merely be a spurious effect of Dahl's operational definition of influence.

Perhaps, as MacRae and Price suggest, a control should be introduced for the senators' ideological positions. Then the measure of influence becomes the residual difference between the frequency with which a senator votes on the winning side and the frequency with which he would have voted on the winning side given his ideological position alone. 20/ My own guess, however, is that the chances of working out an adequate operational procedure for measuring influence in the Senate on the basis of roll call votes alone are very slim. Indications of the senators' positions earlier in the legislative process are available, why not use them?

SUCCESSFUL SPONSORSHIP

The fifth and final approach to the study of influence in the Senate is one which I have devised and called "the index of legislative effectiveness." 21/ This is merely the proportion of all bills and resolutions sponsored by a senator that are passed by the Senate. Private bills are ignored, as are co-sponsorships (except in the cases in which bills and resolutions were introduced jointly by two senators).22/

Conceptually this index is less elegant than the Dahl measure, but it still may give some indication of "influence" in a single context -- the ability to get one's bills passed.

Perhaps the major advantage that this measure has over the Dahl approach is that it is based upon observations at two points in time. Of course, sponsorship of a bill is only a rough index of the senators' intentions or actions prior to the roll call. Many bills are introduced with no intention of their passing. But senators who habitually introduce such bills, are primarily concerned with the propaganda consequences of their actions outside the chamber. Too frequent use of this tactic diminishes the seriousness with which a senator's colleagues take all bills they introduce, thereby lessening their legislative influence. In a sense, these men appear willing to sacrifice influence in the Senate for influence in other groups.

Co-sponsorships also present a perplexing problem -- sometimes co-sponsors are genuinely active and involved in pushing a bill. Often they are not. Our inability to make this distinction weakens the index to some unknown extent.

The frequent practice of committee and subcommittee chairmen attaching their names to bills which they report means that the originator of an idea is not always the sponsor of record. But all senators acquiesce in this practice, partly at least, because even the pro forma backing of a chairman will help their bill's chances of passing.

Finally, by counting all bills and resolutions equally, the measure exaggerates the importance of minor bills. But, it seems to me, it is precisely on minor bills, when the senators are under little if any "pressure" from outside the chamber and on which they do not have pre-established policy positions, that intra-Senate influence is likely to be most in evidence.

For these reasons, it seems to me at any rate, that while this approach has its problems and limitations, that it avoids a number of the difficulties encountered by Professor Dahl. If I have not been as rigorous in criticizing my own work at that of others, I shall rely upon my colleagues on the panel to set me aright.

A COMPARISON OF RESULTS

The adequacy of operational indices must be judged partly in terms of the implicit theory which they contain, and partly in terms of their empirical results. Thus a very brief and partial comparison of the empirical results of these different approaches is now in order.23/

The two most nearly comparable studies are my study of "legislative effectiveness" and Hollinshead's "influence" attribution study. Both are confined to the members of the chamber who served during the entire 83rd and 84th Congresses. Both obtained overall ratings, rather than specifying the scope of "influence" more narrowly to a single policy area. The two measures suggest two quite different structures of "influence" in the Senate (Figure I). The attribution approach yields a "J" shaped curve, with most of the senators at the low-"influence" end of the spectrum. The "effectiveness" measure, on the other hand, suggests a distribution of influence approximating a slightly skewed normal distribution curve. Despite these differences, the two measures are positively associated with each other (Table 3).

One way to obtain additional insight into the differences between the two measures is to look at the types of senators about whom they disagree. The attribution approach gives a substantially higher influence rating than the index of legislative effectiveness for Senators Douglas, Ives, Sparkman, Holland, Symington, Lehman, Dirksen, Kerr, Humphrey and Morse. Almost all these men are highly vocal senators, who receive more than the usual amount of national publicity, but are not noted for their ability to achieve short-run legislative results. High visibility, then, seems to be a factor predisposing even expert panelists to nominate senators as "influentials." A larger number of senators have higher ratings on "legislative effectiveness" than on Hollinshead's attribution measure. The greatest disparities in this direction were in the case of Senators McClellan, Aiken, Ellender and Payne. McClellan's higher rating seems to conform to the perceptions of most Capitol Hill observers. Aiken and Ellender's high effectiveness scores are largely the result of their chairmanship of the Agriculture Committee. Senator Payne devoted virtually his entire term to attending floor debates. and seems to have displayed an exceptional interest in the strictly legislative side of the senators' work. Both of these factors -- possession of a committee chairmanship and a role definition placing a heavy stress upon legislating -- would seem to be related to high scores on the effectiveness measure.

Let us now compare these two measures of "influence" with the rankings obtained by Dahl and his associates. At best, this can be but an approximate comparison. Dahl studied the Senate during the period 1946-54, the Matthews and Hollinshead analyses are for the 1952-56 period. Moreover, Dahl computed not one but two rankings, one on foreign policy issues and the other for tax and economic issues. There is a very considerable difference between the two rankings, the coefficient of rank correlation between the two (figured using Kendall's method) was -.24. The Matthews and Hollinshead studies were content to seek overall rankings, without regard to policy area. Nonetheless, I believe some insight can be obtained by comparing the ratings of those senators found in all three studies.

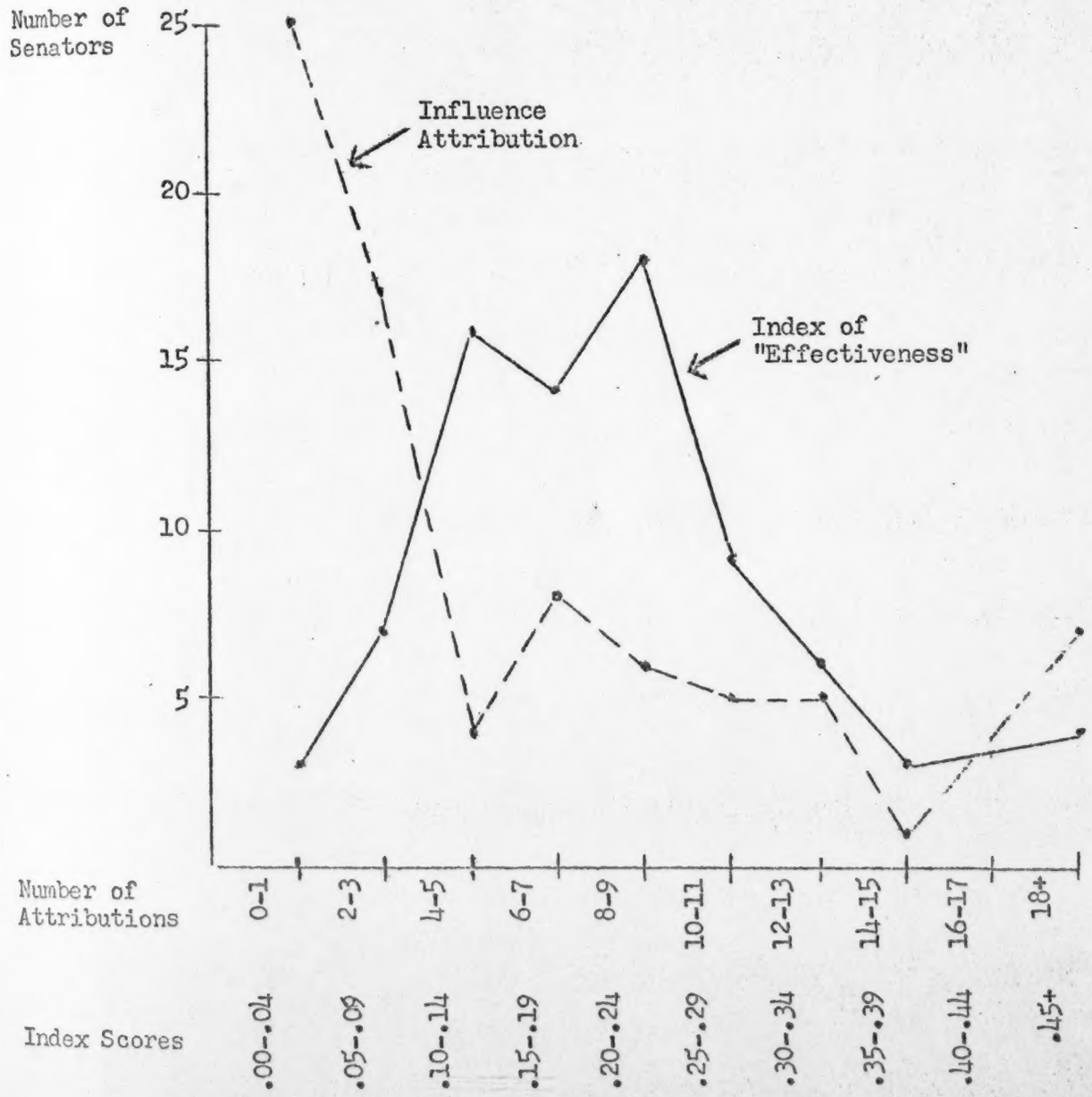
The rank order correlations between these competing measures of "influence" may be found in Table 4. There is no relationship

FIGURE 1

THE DISTRIBUTION OF "INFLUENCE" IN THE SENATE:

A COMPARISON OF TWO MEASURES

(83rd and 84th Congresses)



Note: Intervals represent approximately 10% of range of scores yielded by each measure.

Table 3

A COMPARISON OF THE "INFLUENCE"RANKINGS OF SENATORS OBTAINED THROUGH ATTRIBUTION APPROACH AND THROUGH THE INDEX OF LEGISLATIVE EFFECTIVENESS (83rd and 84th Congresses)

Index of Legislative Effectiveness	Attributed "Influence" Very High	High	Medium	Low	Totals
High	50%	25%	12.5%	12.5%	100% (8)
Medium	6%	19%	19%	55%	100% (47)
Low	0%	20%	24%	56%	100% (25)

Table 4

RANK ORDER CORRELATION OF FOUR MEASURES OF "INFLUENCE" IN THE SENATE

	Dahl: Foreign Policy Issues	Dahl: Taxes and Economic Policy Issues
Index of "Effectiveness"	+.09	+.37
Influence Attribution	+.03	+.24

between the Matthews and Hollinshead lists and the Dahl ranking on foreign policy. On taxes and economic policy, however, both are positively related, in a modest way, with the Dahl rankings.

A look at the ratings of individual senators sheds a little more light on the situation. The top ranking influentials on foreign policy, according to Dahl, were Hayden, Magnuson, Chavez, Smith of New Jersey, George, and Green. The last three makes a good bit of sense; the first three rather little. The suspicion that the "satellite" problem is a factor here is heightened by the fact that Hayden, Chavez and Magnuson rank close to one another on taxes and economic policy, too. Both the Hollinshead and Matthews studies rank Hayden as very high in "influence," Magnuson as moderately high, and Chavez as low.

One final comparison of results is possible here. The two rankings by Dahl as well as the Matthews and Hollinshead lists all show a high correlation between the possession of positions of formal authority and "influence." The party floor leaders fare less well in Dahl's rankings than in the other two. But as a general rule, and no matter how you define it, the party and committee leaders come out with high "influence." 24/ At the same time, the association -- while strong -- is by no means perfect. Other factors are clearly operative as well.

CONCLUSIONS

I promised you that this paper would be long on unsolved problems and short on conclusions -- and it will be. I have already ventured my opinions on five approaches to study influence in the Senate, and there is little need to repeat them now. However, I would like to conclude with a few general and hortatory comments on the research problem we face.

I think we should set our sights higher than we have in the past. We should actually try to study influence in the Senate systematically, no matter how difficult and discouraging it may be.

As political groups go, the Senate is very small. A very large portion of its work is a matter of public record. Much of what happens "behind the scenes" can be found, described with reasonable accuracy, in the next days' headlines. If we are unable systematically to study influence in the Senate, I doubt that we can do it anywhere but in the contrived environment of the laboratory.

This, of course, does not mean that it can be or will be done. But I think that the research reviewed in this paper is encouraging. A few foolhearty political scientists have tried to rise above guesswork. Their analyses leave much to be desired. Hopefully, you may be able to learn from their mistakes.

Notes

1. Donald R. Matthews, U.S. Senators and Their World, to be published by the University of North Carolina Press in October, 1960, p. 118.

2. See Robert A. Dahl, "The Concept of Power," Behavioral Science, II (July, 1957), 201-214; James G. March, "An Introduction to the Theory and Measurement of Influence," American Political Science Review,

XLIX (June,1955), 434-443; Herbert A. Simon, Models of Man, New York, Wiley, 1956, pp. 62-79; Harold Lasswell and Abraham Kaplan, Power and Society, New Haven, Yale, 1950, pp. 71-76; Herbert Goldhamer and E. A. Shils, "Types of Power and Status," American Journal of Sociology, XLV (September, 1939), 171-172.

3. This formulation is from Dahl, op. cit., 202-203, but substantially equivalent formulations might be obtained from any of the above articles. For purposes of this paper, no distinction will be drawn between "influence" and "power."

4. See David B. Truman, The Congressional Party: A Case Study, New York, Wiley, 1959, p. 114 and passim. See also below.

5. Stuart A. Rice, Quantitative Methods in Politics, New York, Knopf, 1928; Herman C. Beyle, Identification and Analysis of Attribute-Cluster-Blocs, Chicago, University of Chicago Press, 1931. The most recent work on the Congress to make extensive use of this technique is Truman, op. cit.

6. The brief time-lag between the first and last votes cast is ignored in statistical analyses although it is of some significance in intra-Senate politics. See Matthews, op. cit., pp. 254-256.

7. Warren Hollinshead, "Influence Within the United States Senate" (A.B. thesis, Amherst College, 1957). The attribution approach is now being used in several studies of state legislatures.

8. See Benjamin Walter, "A Critique of Power-Attribution Procedures" (unpublished MS) and the sources cited therein. I have drawn upon Walter's analysis heavily in this section.

9. For a more optimistic view see James A. Robinson, "Survey Interviewing among Members of Congress," Public Opinion Quarterly, XXIV (Spring 1960), 127-138. While a very large number of callbacks can reduce the frequency of refusals and failures to that normally found in survey research, I have found that the quality of the interviews obtained from extremely reluctant senators is so poor as to make them of limited utility. Too agressive pursuit of senator-respondents also can result in a hostility to research which limits the access to senators of all members of our profession.

10. Hollinshead's study is based upon the ratings of twelve Legislative Assistants.

11. Walter, op. cit., p. 7. A sobering reminder of the fallibility of "expert" panels is provided by B. L. Johnson and W. E. Britt, "Ratings of Senators," New Republic, March 3, 1952, pp. 10-11. The authors asked an unspecified number of "legislative specialists" among political scientists to rate senators on five traits: attitudes

on domestic issues, attitudes on foreign issues, legislative ability, intellectual ability, and personal integrity. The composite scores showed Paul Douglas as the "best" senator; Estes Kefauver, second best; Wayne Morse, third; Herbert Lehman, fourth. On the other hand, Senator Taft was rated 24th; Russell, 25th; Hayden, 26th; Lyndon Johnson, 27th; George, 31st; Knowland 44th; Millikin, 55th; Byrd, 60th; and Bridges, 78th!

12. Walter, op. cit., p. 5.

13. Dahl, op. cit., and R. A. Dahl, J. March, and D. Nasatir, "Influence Ranking in the United States Senate," paper read at the Annual Meeting of the American Political Science Association, Washington, D. C., September 1956.

14. Duncan MacRae, Jr., and Hugh D. Price, "Scale Positions and 'Power' in the Senate," Behavioral Science, IV (July, 1959), 212.

15. See Donald R. Matthews, "The Folkways of the United States Senate: Conformity to Group Norms and Legislative Effectiveness," American Political Science Review, LIII (December, 1959), pp. 1064-1089; Matthews, U.S. Senators and Their World, pp. 254-258.

16. Matthews, U.S. Senators and Their World, p. 251.

17. G. M. Belknap, "A Study of Senatorial Voting by Scale Analysis," Ph.D. dissertation, University of Chicago, 1951; D. MacRae, Jr., Dimensions of Congressional Voting: A Statistical Study of the House of Representatives, Berkeley, University of California, 1958; H. D. Price, "Scale Analysis of Senate Voting Patterns, 1949-56," Ph.D. dissertation, Harvard University, 1958; C. D. Farris, "A Method for Determining Ideological Groupings in the Congress," Journal of Politics, XX (May, 1958), 303-338.

18. MacRae and Price, op. cit. p. 213.

19. Ibid., p. 215.

20. A similar approach has been adopted by the author in seeking to determine the impact of the party leadership on the voting behavior of senators. See Matthews, U.S. Senators and Their World, pp. 133-140, 280.

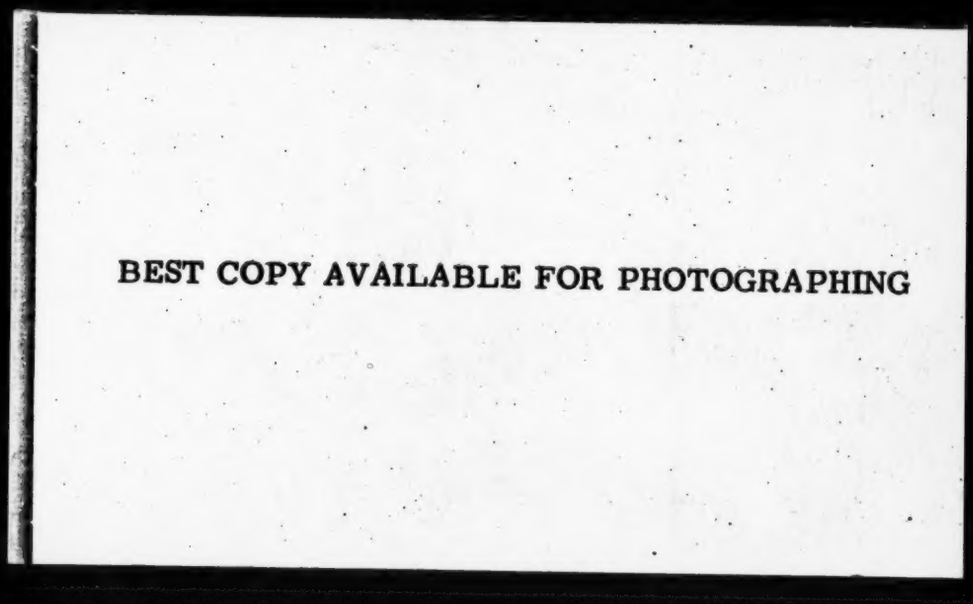
21. Matthews, "Folkways of the United States Senate," p. 1085-86; and Matthews, U.S. Senators and Their World, pp. 278-79.

22. David Truman, op. cit., ch. 4 makes some use of a similar measure based upon the frequency with which party leaders' "initiatives" (motions offered, points of order raised, and recorded votes called for) are supported by a majority of the parties and the Senate as a whole.

23. Professor James A. Robinson is currently working on a far more

extensive and systematic comparison of these and other operational measures than is possible here.

24. See Matthews, U.S. Senators and Their World, pp. 169-175. This analysis finds that majority party leaders were the most effective office-holders in the Senate, followed by the committee chairmen, minority party leaders, and ranking minority members.


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THE REPUBLICANS: HAVE THEY LOST THEIR FUTURE?

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

One of the favorite parlor games since the 1956 elections has been assessing the health of the Republican party. Democrats have been noisier in playing this game than Republicans but no more in earnest -- and both groups have been more intensely interested in it since the 1958 elections. They should be for they are confronted with the spectacle of a landslide-winning Republican President heading a party that is sadly outclassed in governorships--34-16--and, even worse, virtually back to its dismal 1934 position in the Congress. This spectacle is obviously chilling to Republicans and should be to Democrats.

Democrats have generally not been too alarmed by this situation--they have assumed that Eisenhower's retirement would rectify it. Most of the attention, therefore, has been focused on the Republican dilemma, with some worthy essayists, notably Walter Prescott Webb, stating flatly that the Republicans have lost their future. I will take my text from Professor Webb and suggest answers to a modest restatement of his thesis, "The Republicans: Have They Lost Their Future?"

I will attempt to accomplish this chore by using Professor Webb's tactics--history and cloakroom politics. In doing this, I purposely reject the use of the jargon of political theory, which in the case of American politics has now descended to manipulation of the shibboleth phrases of liberalism and conservatism. The debate and study of these terms, and the concepts and issues they would cover are fascinating. Unfortunately the trouble with utilizing them as tools for realistic political analysis is, as Norman Thomas recently put it, that far from being meaningless, "they mean too many things." The techniques of historian and cloakroom politician will do quite well. History reminds us that public men and organizations are partly captives to the past. Politics, whether conducted in the cloakroom or in the ward, reminds us that political futures are based on votes and influence. Together these two apparently contradictory approaches to politics broaden our minds as to the possibilities and variables -- the ambiguous legacies and futures -- which always confront man and society.

Let us first turn to history. The Republican party was born from the grass-roots as a party of discontent, of principles and issues. It was a coalition party organized on sectional lines of Free Soilers, Whigs, some Democrats, and even some Know Nothings. It pushed its issues with the vigor born of youth and conviction against a tired, feeble, and divided Democratic party. The disintegration of the Democrats in 1860 plus the vigor of the young party led to electoral victory. It renewed its success in 1864 as a majority coalition in a truncated nation. After the war, the Republican party combined a number of assets--its reconstruction power, continued exploitation of civil war issues, the victory of arms, national prosperity and opportunity to perpetuate itself in power. In the Grand Army of the Republic and the expanding business and industrial networks, the Republicans enjoyed a built-in political organization. Even so, the Republicans were in a precarious position from 1872-1896 for of the seven presidential elections,

they lost two contests, won two with a minority of popular votes, and won one by but 10,000 popular votes. Even worse was the Republican position in Congress from 1871 to 1897. During these thirteen congresses, the Republicans controlled both houses in only two. The Democrats were also twice in control of both the House and the Senate. In the remaining nine congresses the Republicans were only in control of one house, usually the Senate. Moreover, when the Democrats controlled the House or the Senate they usually had more than a nominal majority. It is also interesting that even during the four congresses of President Cleveland's terms, the Democrats controlled both houses in only one congress while the Republicans controlled both houses in one of the other congresses. The possible parallel with our own times is obvious.

By 1896, the war and victory issues, and the importance of the G.A.R. organization were diminishing. The Republicans were fortunately able to resurrect the prosperity issue that had fared so poorly during the busts and recessions from 1873 on. The general prosperity which the nation enjoyed after 1896 was however only one prop supporting the Republicans. Two others--expansion and middle class reform-- contributed to permit the party to hold office firmly until Wilson's election, except for the loss of the House in 1911. Unfortunately for the Republicans, expansion proved to be of but temporary value and middle class reform served to break up the party in 1912. Prosperity was not a sufficiently urgent or exclusive issue to stop the double-barrelled effects of a party split and energetic Democratic opposition.

In 1920, the Republicans were restored to office as a result of local issues, temporary issues, disillusionment with the Democrats, and a reinvigorated prosperity and opportunity appeal. The majority of voters was willing to continue voting for the Grand Old Party as long as it received a share of prosperity's dividends, especially as the opposition appeared to offer nothing as good. With Herbert Hoover's election in 1928, the Republican party stood--or perhaps sat--solidly in office as it had for ten years in Congress and eight years in the White House. Yet, while the Republican majorities had been large enough, the party was perched on one issue--prosperity. As events were soon to prove, peace, prohibition, efficiency, and local issues were to have little connection with the continuing good health of the party. Prosperity, the greatest Republican issue, turned almost overnight to mock the party as the pall of depression descended. The administration that went into office on a landslide in 1928 was to be swept out by another landslide four years later. For twenty years the Republicans were to remain in a political limbo.

The initiative passed to the Democrats in 1932 much as it had to the Republicans in 1860. Hoover played to Franklin Roosevelt as Buchanan had to Lincoln. Roosevelt and his associates gave a rebirth to the Democratic party as surely as Lincoln and his associates gave birth to the Republican party as a political power. Roosevelt made the most of the political benefits conferred upon him by the Republican debacle of 1932. He restored the confidence of the majority of Americans. He provided relief from the depression, some economic recovery, and a dash of reform. Politically he was most effective as he built a new coalition of Democrats, Republicans, dissidents,

and a large number of minority groups. He was ingenious in using the powers of government, and in his ability to inspire and to communicate with people to solidify his coalition in office. As the Republicans had used the G.A.R. and business and industrial organization effectively for political purpose, so Roosevelt used the rapidly expanding frameworks of unionism and bureaucracy to reinforce his coalition. As the Republicans had successfully compromised the interests of East and West so Roosevelt compromised the interests of farm and city, of Northern minority groups and Southern Democrats.

Yet while Roosevelt was masterfully building a political organization, the Republicans presented a shabby spectacle. As a party, they were confused and divided. Many Republicans joined Roosevelt's grand coalition, with others not joining but essentially going along with it. A few Republican fragments rallied around the lost cause of Hoover, while others went off on almost crackpot tangents. Probably the largest group of Republicans tried to split the differences between these four groups in order to appear reasonable. The party organization deteriorated rapidly after 1932 reflecting the confusion and despair in the party. Republican fortunes skidded still further in 1934 when for the first time in generations the opposition party lost seats in both houses of Congress in the off-Presidential year elections. The Republican organization went from bad to worse by 1936. Then Alf Landon and his colleagues started the painful task of rebuilding the party, a task that did not show results until 1938 when Republicans finally made some significant election advances. The process went on uninterruptedly until 1946 when the party emerged with control of Congress. This reconstruction of the party should not be underestimated for it was fought against great odds. The depression and war years were to the Republicans what the Civil War and Reconstruction years had been to the Democrats. The Democrats, from 1930 to 1946, ran as effectively against Herbert Hoover as the Republicans had run against Jeff Davis from 1860 to 1876. The Republicans were portrayed not only as betraying the nation economically in 1929 but later were tagged with being crass isolationists and charged with obstructing the prosecution of peace and war. Some of the more zealous Democrats went so far to apply the term "fascist" to Republicans. Of course, the Republicans also encountered great trouble in finding appealing issues and candidates. Certainly no Republican could compete with Roosevelt on equal terms, but state and local candidates were found who often enough gave effective battle to the Democrats. Republican issues were generally ones of expedience—"me too, but better"—or they were local or negative in nature. The Democrats with their widespread support had developed such a widespread appeal on issues that it was hard for Republicans to do anything else. Yet, using their local, negative and expedient issues, plus hard work, plus some new blood, plus Democratic mistakes, the Republicans found themselves on the verge of Presidential victory in 1948. They had everything in their favor—hope, vigor, control of Congress, and a half dozen promising Presidential hopefuls. The Democrats were splitting into three parties and were in a generally embarrassing situation. Yet, the Republicans lost, and at that by a plurality of two million votes and a majority of well over four million votes.

This defeat of 1948, which included the loss of Congress, should have been the occasion for more Republican introspection than was the case. It was to be but the first of several strange experiences for the Republicans.

Their position was not greatly improved in the Congressional elections of 1950 when they hoped to capitalize on the inability of a Democratic Congress to get along with a Democratic President and on the issues created by the coming of the Korean War. In 1952, the Republicans had plenty of issues. Take your pick: Communism, corruption, Korea, creeping socialism, leaping inflation, fiscal irresponsibility. More important the party's ticket was headed by an unbeatable candidate. Finally in 1952, the long twenty years of waiting were over, as the Republicans gained control of the White House and Congress. The great war hero's decisive victory apparently obscured the fact that the Republicans had but token majorities in the House and Senate. The taste of victory and power seemingly made it unnecessary for Republicans to ask searching questions as to why there was such a wide gap between the performances of Eisenhower and his battalion of running mates. As was almost inevitable, the Republicans lost control of Congress in 1954. Republicans sought solace in explanations to the effect that "why, we are just rebuilding the party" or "Wait until 1956." Nineteen-fifty-six came and it was clear that not only had the party not been rebuilt but that President Eisenhower, while scoring a greater victory than before, was not strong enough to pull his weak party through to control of Congress. As we know 1958 saw the Republicans lose even more ground than expected in Congress.

What explains the difficulties of the Republicans during the last twelve years of "surprises?" For the answers to this question we might better turn from history to the insights of the cloakroom politician. In 1948, they ran into a Democratic Presidential candidate and many lesser Democratic candidates who fought like political wildcats and proved to be astute political strategists. Yet, the aggressive contests fought by Democrats in and since 1948 do not begin to tell the story of Republican losses. The Democrats have had much more working in their favor than political agressiveness and shrewdness. Most of these are residual from the Roosevelt and Truman Presidencies. The political work of the New Deal and its leader is still a vital force in American politics. Few are the Democratic officeholders who are not beholden to President Roosevelt for their political success. There are today legions of voters who are suspicious of the Republicans, not on the basis of current issues but on issues of two or three decades ago. Large are the number of political commentators who automatically view Democratic promises, personalities, and proposals favorably because of Roosevelt's mesmerism. President Truman gave all this a booster shot and every Democrat since 1932 has taken full advantage of the resulting public suspicion of Republicans. Related to this is that the Democrats can revel in hagiolatry to an extent denied the Republicans. The Democrats can successfully invoke the names of Roosevelt and Wilson with real political benefits. They can dip back into history to Jefferson and Jackson with effect. The Republicans have only two political saints, Lincoln and Theodore Roosevelt, neither of them recent. And now, after Los Angeles oratory, even Lincoln may be taken away from them. The Democrats are also fortunate in their holdover leadership, which can, and does frequently, recall its association with Saint Franklin and depending upon the time and place with the Venerable Harry. All this means that Democrats can escape the scrutiny that the Republican must usually undergo with the majority of voters. I submit that Senator Johnson would be far less acceptable to the country than he is

if he were a Republican and that Everett Dirksen would be far more acceptable if he were a Democrat. A case could be made that Jack Kennedy might be considered a carbon copy of Nixon were he a Republican and that Jack Javits might, under Democratic colors, be considered the nation's leading liberal. In politics as in the marketing of food, the brand name means a great deal.

There are a few other Democratic strong points which must be mentioned. Foremost is the party's bedrock of strength--the South. This land of many factions but of one party usually offers the Democrats an initial electoral vote lead of twenty per cent. Even in the Eisenhower elections of 1952 and 1956, the Democrats could count on a head start of ten per cent because of the South. Perhaps too much attention is given the Democratic advantage in electoral votes. The Eisenhower victories showed that it can be partially overcome. More difficult to overcome is that the one-party South, virtually without contest, gives the Democrats continuing control of twenty per cent of the seats in the House and the Senate. President Eisenhower's Dixie harvests were not accompanied by similar harvests of Southern Congressional seats by the Republicans. These two situations mean that Democrats have a substantial advantage over their opponents before a single vote is cast. This advantage has been enhanced by the elimination of a bloc of Republican one-party states to counterweigh the Democratic South. This is the result of the rise of Democratic organizational activity and respectability in formerly stalwart Republican communities. Three decades of Democratic popularity and power made Democrats respectable in communities where previously they were often classed with the town unfortunates. The New Deal and Fair Deal permitted the Democrats to proselytize and organize as they had not done since before the Civil War. Their efforts in this respect have not perceptibly relaxed since President Truman left office. Because of their recently acquired respectability and their organizational efforts, the Democrats have continued to recruit some new and effective leaders to perpetuate their strength at state and local levels throughout the country. Then too, the Democrats, by ably using their oratorical powers, have portrayed a continued concern for the nation's future that has out-concerned concerned Republicans. Some of the Democratic thinking has been unsound and some of the talk hypocritical, but their spokesmen have been verbally magnificant in advocating action, and action and advocacy are stirring in the appeal for votes.

I may be accused of believing that Republicans suffer only because of the facts of American political life and of Democratic strength. This is not true for the Republicans have been sorely hurt, especially during the last twelve years, by their own deficiencies. Probably their most important defect has been their inability to dramatize and to explain the importance of their accomplishments and goals in appealing terms. Examples that come to mind are the absymal Republican public relations on the Taft-Hartley Act, the Eisenhower administration's activities during the recessions of 1953-1954 and 1957-1958, the Little Rock situation of 1957, the many issues connected with the bi-partisan foreign policy in 1947 and 1948, social security and trade reciprocity extensions, foreign aid, the National Defense Education Act, civil rights advances, and labor reform legislation. In all of these

instances the Democrats stole the initiative on public relations. Related to this has been the slowness of the Republicans to point out instances of Democratic contradictions. As a result the public was never aware that a majority of Democrats in Congress voted for measures which a majority of them later condemned like the Taft-Hartley Act, and Tidelands oil legislation in both 1952 and 1953. The Republicans could also have effectively acquainted the public with the fact that an overwhelming majority of Democratic Representatives voted for the alledgedly reactionary Portal-to-Portal Pay legislation of 1947, that a majority of Democratic Senators favored placing limitations on the entry of immigrants in 1953 and that in 1954 substantial Democratic support was needed and received to enact flexible price suppo ts. It is ironic that the Republicans--who have so often been criticized for being overly conscious of public relations in the Madison Avenue style--have been so lacking in driving across to the public so many of the things they have done, tried to do, or had a hand in doing.

It is too easy to ascribe this public relations failing to the fear of Republicans that by publicizing these things they might split the party. This has probably been a negligible factor for it is more likely that the Republicans have just not been alert. This in turn has been related to a second great Republican defect--the general lack of fight on the part of many Republicans. This is not to say that they are more gentlemanly than Democrats, but rather that their instinct for political battle has been dulled. Few Republican candidates feel that they really need to hold political office as a means of livelihood. Unlike many Democrats, the Republican's fight for office is not a practical bread-and-butter one and not likely to be pursued with the greatest vigor. Often Republicans are not as likely as Democrats to view public office as offering greater prestige than most other activities. Even real Republican professional politicians rarely see themselves as professionals in government or politics. True of candidates for public office, it also affects the entire Republican organization where service to the party is characteristically performed with less vigor than the local community chest drive. Such cavalier attitudes are not likely to lead to conducting politics on a very professional level.

A third major Republican deficiency, and one certainly related to the first two defects, is that candidates and workers are not able to communicate with the broadest possible range of potential voters. They are usually drawn from safe, respectable, well intentioned, middle class and professional elements. To continue to be safe and respectable, they continue to campaign among these elements. They may wonder about the political intentions of clerks, workers and tenant farmers but they rarely wander among them. If the Republican appeal spills over into the lower classes it is largely because of the penetration of general public relations media, the appeal of an unusual candidate like Eisenhower, McCarthy or Rockefeller, or the activity of that rare object, the verbal lower class Republican. The inability of Republicans to look beyond Main Street, the country clubs and the women's clubs for votes, combined with their general lack of aggressiveness and their public relations failures explains much of their plight between 1948 and 1960.

But there are other factors to be mentioned. There are some Republicans who fight hard politically. Generally, they are those Republicans who are the best targets for Democratic sharpshooters. They are the men like Barry Goldwater or Joseph McCarthy. They can be successful in a number of constituencies because they fight hard, and because they fight hard they can sometimes be even more successful in controlling party machinery or in wringing policy concessions from the more moderate Republicans. There are other Republicans whom I will call the holdovers, holdovers from earlier political ages, who have been unable to keep up-to-date on problems or are so accustomed to opposing that they cannot provide positive leadership. The success or prominence of these two groups of men in the party is a liability because they too often offend public sensibilities and hold views that provide little real leadership for the party or the nation in modern times. Actually these two groups have lost ground in the party during the Eisenhower administration and would probably constitute no more serious burden to Republicanism than Faubus or DeSapio do to the Democrats if it were not for the fact that the Republicans already have to carry too many burdens.

From what has been said it may be assumed that the Republicans have no future. Yet, it would be unhistorical and unpolitical to conclude this for American politics has never operated on the logic of any given current situation. If it had the Democrats as a party would have been dead in 1860, 1868, 1900 or 1928. The Republican party would never have been born, would never have elected a President in 1860 or at least not have elected Abraham Lincoln. Moreover, the party would have expired in 1892 or 1932. Logic was not borne out in these instances because party health is predicated on too many factors. This alone should make reasonable the assumption that the Republican party is as permanent a fixture on the American scene as anything else. Yet, there are several other reasons justifying this assumption. First, the Republican party has a history and tradition of over one hundred years, a basic core of loyalties, support and traditions that enabled it to thrive during the arduous days of the 1870's, 1880's, and 1890's, and to survive the twin terrors of the Great Depression and the New Deal. Such institutional makings are not easily or lightly thrown away. Second, the party has not seen any major defections from its leadership in the last twenty years. This the Democratic party cannot say. Republican leaders, veterans, novices and converts, have a great stake in their party's continuance and growth. Around these men are clustered the effective popular support of the party. Third, at present there appears to be no domestic crisis as important as the Great Depression that could cause the party to crumble. Despite the occasional spats between liberals and conservatives in the party, party ranks appear to be relatively well composed. Fourth, it is most doubtful that our two-party system will metamorphose into a one-party or multi-party system. Americans, as Clinton Rossiter has observed, generally follow a "low-key, independent, skeptical approach" to politics. This combined with the national tradition of two party politics and the fact that many Americans dislike or distrust the Democratic party makes opposition politics essential. As for the development of a multi-party system, not only tradition but political realities obstruct the development of strong third, fourth or fifth parties, or successful independent state parties.

Fifth, even though opposition could take other forms, it is apparent that there are no significant standby elements for protest that could be easily organized into a new major second party. Of course, the Republicans and for that matter the Democrats should not assume too much. Crises now unimaginable or beyond our control could develop to shatter one or both of the parties. Then again, opposition in the future could take forms of which we are now unaware. Yet, the present picture justifies assumptions that we will have two-party--Democratic and Republican--politics as usual for some time to come.

It is not enough to say that Republicans can reasonably assume their party will merely survive. There are reasons to assume that it could prosper, not only in the Presidency, but also in Congress and the states. The Democrats labor under some serious handicaps and under some serious portents for the future. Moreover, the Republicans currently have some blessings and could in the future receive some bountiful political harvests. Let us first look at the Democratic problems.

The Democrats, for all their brave talk about new frontiers and a program for the sixties, have been placing a great deal of reliance on old issues and their extensions. With the notable exception of the Forand bill, their record in the last three congresses shows this. So have their quadrennial platforms of 1952 and 1956. As for the 1960 national Democratic platform, it is not novel except in its format. It reveals a party groping its way back to the Brannan Plan. The foreign policy planks could have been written by George Marshall over a decade ago. On labor problems, the platform shows nothing more original than an extension of the Taft-Hartley Act. It is understandable that the Democrats should be reluctant to forsake the issues of the New and Fair Deals which have served them so well, and certainly some of these ideas will be of continuing interest to the public. Yet a number of them are obsolete or of secondary importance in this new decade. There are three significant consequences of this partial program paralysis: it still leaves the field open to the Republicans to suggest imaginative solutions to the nation's problems; it permits Republicans, suffering an issue paralysis of their own, still to make some profit out of its own older issues; and it puts the Democrats in the position of not really forging ahead on issues or imaginative leadership.

The Democrats' issue troubles are related to the basic divisibleness of their party. Nine years ago, Samuel Lubell commented that the Democratic coalition had lost its capacity for decisive political action. There is no reason to conclude that this comment is not just as applicable today. The record of the Democratic leadership and membership of Congress in the 1950's has not indicated evidence to the contrary. Republican National Committee Chairman Thruston Morton has repeatedly charged the 86th Congress with being "do nothing" without anyone seriously contesting him. It is clear that the Democrats are faced by the choice between being a majority of conflicting interests which tend to cancel out each other or a dynamic group in grave danger if disintegrating. Even if Senator Kennedy is elected President, there remains a serious question as to whether he can resolve this dilemma. Of course, Republican inaction is no answer to Democratic stalemate, but the Republicans appear to have a considerable advantage over the Democrats in party harmony. If they decide to act, they are in a reasonably good position to test their unity on issues.

Another Democratic weakness is their overworking of the term "liberal." Democrats find it too easy to employ the word for to many Americans it has a magic sound. The result unfortunately has been fuzzy thinking on the part of would be liberals. More unfortunate has been that a good deal of rascality has passed by under the veneer of liberalism. This does have its amusing aspect for most of today's self-styled liberals could have not stood muster on either issues or attitudes with the fighting liberals of the 1920's, 30's, or early 40's. It is plainly ridiculous for men who would vote for the Communist Control Act, dodge the McCarthy issue, criticize Negro attempts to gain equality, avoid the democratization of unions, to call themselves liberals. This working of a word rather than its meaning has already hurt some Democrats. A few hard working Republicans have already successfully revealed to the public the lag between Democratic rhetoric and action. This situation is aggravated by the fact that the Democrats are raising a crop of conservatives which could further embarrass a party claiming to be liberal. In the Midwest such men are to be seen as governors of Iowa, Kansas and Nebraska. While they are able and successful, their success could cause another middle class reform movement that would be channelled mainly through Republican ranks. Do not conclude that the Republicans are in no position to take advantage of it. Remember that Battle Bob La Follette and George Norris as members of the House of Representatives gave no significant signs of their approaching progressivism, and Teddy Roosevelt and William Allen White before 1898 could easily have been considered reactionaries.

One last Democratic weakness may be its paucity of national leadership. Carey McWilliams recently wrote in The Nation that it is paradoxical that Senator Kennedy, "a young man without an impressive political record, without a program, without broad rank-and-file support, backed by not a single interest group with the possible exception of labor, not merely won the nomination of a great party without substantial opposition, but took possession of it, lock, stock, and barrel." McWilliams may exaggerate but it is true that the Democrats, despite a wealth of local and state leadership, produced no heir apparent during twelve years of Roosevelt, produced no leader capable of seriously contesting Truman in 1948, had to turn to a political unknown in 1952, and again to the same man in 1956. In short, the Democrats in almost thirty years have groomed no successor to their well-groomed 1932 nominee.

This leads us to a survey of Republican possibilities for the future, possibilities quite distinct from Democratic weaknesses. Certainly, if the economy improves as Peter Drucker and others predict the whole country may soon be talking the language of Main Street and the country club. This embourgeoisement of the electorate may also mean its Republicanization. It has also been suggested that the rise in the nation's level of education, average age, proportion of women and status consciousness, and the projected decrease in the proportion of organizad labor and of farmers will favor Republicans. While the effect of these factors remains to be seen, they will keep both Democrats and Republicans active as interested and perhaps keen analysts of statistical data.

Yet, there are more substantial possibilities for a happy Republican future. There are signs that modern Republicanism is taking root. The moderation of Vice President Nixon and Senator Dirksen is symptomatic, as is the willing acceptance of Ambassador Lodge as the party's nominee for Vice

President. The Taft wing of the party has been seriously damaged by death, defeat and retirement. Under President Eisenhower's gentle -- and possibly astute--sponsorship, the responsible and moderate Republican has been emerging. The debacles in congressional and gubernatorial elections in 1954, 1956 and 1958 have left the doors open to young blood and energy. As a result, there have been, in the last two elections, the victories of governors like Hatfield of Oregon and Rockefeller of New York, of Senators like Case of New Jersey, Javits of New York, Cooper and Morton of Kentucky. Barry Goldwater has also blazed a trail for energetic conservatives, a trail that will be taken successfully in some areas. Then too, some excellent administrative leadership has been developed during the Eisenhower administration. Anderson, Dillon, Flemming, Mitchell, Rogers, and Seaton certainly deserve mention in this respect; their very presence in high appointive office represents real development from the original Eisenhower team. While Jenner, Knowland and McCarthy and other Republican ultra-conservatives of the 40's and 50's have passed from power, it is interesting to note that some of the moderates of the 30's and 40's like Tom Dewey, Alf Landon and Charles P. Taft are still creating good will and encouraging talented newcomers for the party within limited spheres.

Continuing prosperity could contribute substantially to Republican hopes for the future. It could be enough to swing this election for Nixon and the following election for a Republican House of Representatives. If Nixon fails of election this year, Republican prosperity of the 1950's could serve as the basis for a Republican resurgence some time in the next four years. If the Democrats win the White House and the Congress this year, they will not only inherit the serious problems facing the present administration but will have to tussle with the dangers created by their own promised spending programs. Not to implement these programs could lose votes and to implement them could cause serious economic dislocation. Unless the Democrats are as good as the press releases of their National Committee headquarters indicate, they will make serious mistakes. The Republicans then will be in an admirable position to point out these inevitable mistakes, but unlike the Republicans of the three preceding decades, they will be able to orate with pride about the good old days of the "last Republican administration." And, incidentally, they will be able to gloat not only about the Eisenhower prosperity, but, without fudging too much, about how they achieved it without wage and price controls, with a tax reduction, with relative labor-management calm, without armed conflict, without seriously dividing public sentiment, and with a relaxation of government centralization.

All of this means that the Republicans, whether they win or lose the Presidency this year, whether they gain or lose Congressional strength, will not be a bad shape for the partisan wars ahead. Yet they could do better. Many possibilities for political advantage could be developed by the Republicans if they would but seize them. Some Republican progress has been made among Negroes thanks a bit to administrative actions, even more to the record of the Supreme Court and the continued Democratic Congressional restraint on civil liberties. Former President Truman's attitudes on the sit-in situations has not helped the Democrats and it remains to be

seen how courageous Democratic leaders are going to be on racial issues in view of the importance of Southern Congressmen in accomplishing Democratic legislative goals. Of course, the Republicans face a political dilemma on civil liberties. For political success, they need Southern support or Negro support. They want both but cannot seem to make up their minds which they want more. Their indecision is understandable if not greatly appreciated. Despite whatever appeal they might have for large groups of Southerners they have not made serious inroads in the South. Only seven Republicans hold seats from the South and those precariously. They have elected only one governor in the South since Reconstruction and only one out of every forty state legislators in the South are Republican. Despite the results of 1952 and 1956, they cannot count on any Southern state in a Presidential election. As for Negroes, the substantial majority of them are still in the Democratic coalition, notwithstanding the significant civil liberties gains made during the Eisenhower years. The Republicans are as aware as anyone else that the Negro votes not solely on the basis of civil liberties issues. At least as important to the Negro are economic questions. The Republicans must make a choice: continued indecision will not profit them greatly either among white Southerners or among Negroes. The choice, though it be risky, is essential if the Republicans are to have any great hope of becoming the party of the majority, and the choice is not a difficult one to make. Negro voters are strong enough in populous Northern states significantly to influence the voting decisions in a large number of Congressional districts and to swing crucial electoral votes. Moreover, more vigorous efforts to secure equal political rights for Southern Negroes could offset the loss of other Southern votes. If a determined Republican drive on civil liberties should fail to see the return of Negroes to the party of Lincoln, it is unlikely that a great deal would be lost. Even to a party with only 135 seats in the House of Representatives 7 seats would not be greatly missed, and should the Republicans field another candidate with Eisenhower's appeal they could probably count on some Southern states jumping the reservation. Then too, should a substantial Republican movement develop among Southern whites as it has in Florida, it will probably be based on issues and attractions other than minority rights.

Labor, organized or unorganized, is a more profitable area for Republican sorties than most Republicans realize. Even in the darkest Depression days, Republicans nationally could count on the support of a bit over twenty per cent of the workingmen's vote. Without working too hard, Republicans in the 1950's drew a favorable response from thirty to forty per cent of labor. Increased effort by party men could increase labor support and take some of the cutting edge off labor criticism and opposition. The Republicans could provide a real service to the nation as well as to themselves this way by acting as go-betweens in the exchange of ideas between labor and business about the mutual and individual problems of each. Under Secretary of Labor Mitchell, real progress has been made in this direction. The party can learn much from him.

Suburbia is an area where Republicans have made and can still make great advances politically. There is considerable evidence to show that suburban growth and Republicans gains are related, although careful inspection of

suburban areas demonstrates that this is not automatic. Republicans must work for suburban votes. The prize is worth working for and guarding jealously not just in terms of the great population movement to the suburbs but also in view of the relatively high suburban voting and birth rates. Tea party campaigning and house and garden platitudes will not be enough. Republicans must be sensitive to the peculiar needs of suburban communities. Water, utility rates, transportation, inter-urban squabbles, tax equalization, and other suburban problems must be met sympathetically.

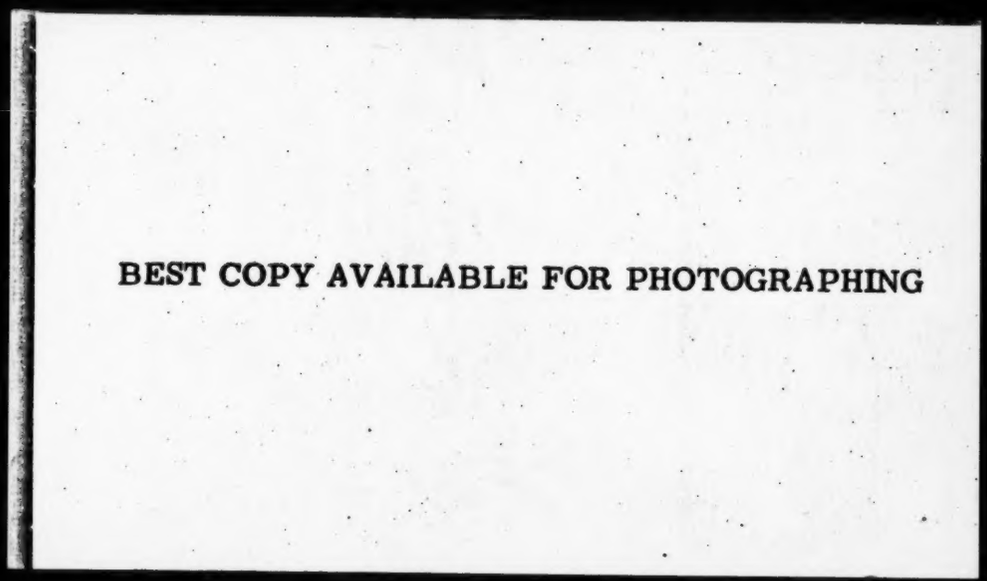
While party harmony, improved leadership, prosperity, suburbia, and real opportunities to gain and serve Negro and labor supporters make the party's future look far from gloomy, even if the party is defeated this year, a Nixon victory could be the bridge Republicans might travel to reachieving a position as the nation's major party. Nixon is far more the party man than Eisenhower and would be less reluctant to use his office and its political advantages to regroup and revitalize Republicanism. This process would entail not only better backing of appealing and aspiring Republican politicians but implementation of positive programs. Vice President Nixon and his aides have given signs that they recognize the need for action on problems involving urban areas, care of the aged, housing, medical facilities, labor retraining and rehabilitation, and industrial peace. As for agriculture and foreign affairs, one cannot assume that the Republicans can do better than the Democrats. Yet, in agriculture, the field has really not been plowed properly by either party and the result has been forty years of frustration. In foreign affairs, the Democratic platform, despite the apparent confidence of its draftsmen, gives evidence that there is as much whistling in the dark among Democrats as there is among Republicans. On the farm question, the Republicans could at least call a conference of farm organizations and let them work out a program subject to government revision and special referenda among farmers. Whatever the Republicans decide to do, they may, after eight years of consolidation, now be ready to act energetically. Not only stirrings in Nixon's camp, the National Committee and among a number of high administrative officers show this, but Governor Rockefeller's vigorous analyses and the increased concern with issues by Republican candidates for Congress support this contention.

Yet, the Republicans also have some timely traditional issues that they can turn to with possibilities of success. One is a bolstering of the national pride. Many Americans find it hard to accept Democratic criticisms of our society. The Republicans, with honor, could lead a turning away from the orgies of self-castigation which we have experienced during the 1950's. They could make look ridiculous the spectacle of leaders crying for leadership, of those who can afford to sacrifice calling for sacrifice from others, of drivers of fin tailed motor vehicles deriding the fin tailed economy, of golf players ridiculing other golf players. Republicans could ask some tart questions of those purposeful people splashing around like goldfish looking for a purpose, of those innocents who are perplexed because they do not find a happy ending at the adjournment of each session of a Democratic Congress, of those who profess love for the people yet blame the people as well as the Republicans for every problem they can find or fabricate. The Republicans would do well to accept this alliance with the people for it is

the only time that those Democrats who cry doom and gloom permit such an alliance. In short, when it is fashionable in some circles to talk in terms of leaders, to think in terms of responsibility to some indefinite phrases rather than to the people, the Republicans could make a lot of progress with the idea of supporting and encouraging the better aspirations of the people, rather than by sneering at their relatively harmless amusements and by cursing their few iniquities.

Republican defense of popular aspirations could fit in well with other Republican tendencies of the past two generations--suspicion of bureaucracy and centralization. Despite clever comments that the bureaucracy is always the party in administrative power, bureaucracy poses many problems. There is much truth in John Dos Passos' observation that "zealots for total bureaucratic rule, whose dogma provides them with boots and spurs to ride the mass of mankind, justify themselves by the same political phraseology which the men of Jefferson's day hoped would make forever impossible the regimentation of the many by the few." The bureaucrat is a familiar and not always undeserving target of abuse in literature and in popular upheavals. The people and the Republicans would do well to be unrelentingly suspicious of him and of those who would widen the scope of his authority. Closely related to the issue of bureaucracy is that of centralization. There is much good criticism that can legitimately be made of centralization, and much can be said in defense of its main alternative in the United States, federalism. It may be that federalism hampers real decision making. Yet, centralization has given promise of transferring and increasnng the inequalities represented by check and balance groups in courthouses and state capitols. Centralization has also aggravated situations by distance and a certain element of snobbery and ignorance in the national capital. Centralization and bureaucracy can stymie solutions of problems just as effectively as can state and local governments and private business. It is doubtful that the public administrator in Washington acts more swiftly than his counterpart in Albany, Tallahassee, or Topeka, or is more compassionate, or less biased. The Republicans would do well to retain their suspicions of bureaucracy and centralization, and align with them a vigorous defense of popular individual aspirations. This is not to say that the Republican party will or should crusade to weaken bureaucracy or centralization in carrying out the functions which properly belong to them. But by seeking or forcing a compromise that combines the best of private initiative, federalism and centralization; of democracy, individualism and efficiency; of checks and balances and action, the Republicans will remain true to themselves and keep strong issues which are likely to have recurrent appeal.

Because of the nature of our political system and the lack of development of other channels of opposition, the Republicans can reasonably expect to be the permanent party of opposition even if they devote no more time to politics than to going to the barber or the hairdresser. Yet, organization, energy, vital issues, communication and communion with the people, and a modicum of patience could expand the fortunes of the Grand Old Party. It is painfully obvious by now that I believe that the Republicans have a future and not necessarily as a caretaker party.


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FEDERAL-INTERSTATE COMPACT COOPERATION: THE POLITICAL PROBLEM

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Paper prepared for presentation on a panel, "Feasibility of Federal-Interstate Partnership in Water Resource Development", arranged by THE WATER RESEARCH FOUNDATION FOR THE DELAWARE RIVER BASIN and sponsored by the Regional Sciences Association at the 56th Annual Meeting of the American Political Science Association, New York, 1960.

FEDERAL-INTERSTATE COMPACT COOPERATION:

THE POLITICAL PROBLEM

The general subject of today's panel is the feasibility of the federal-interstate compact approach in the field of water resource development. It would appear to me that three particular problems are involved in the employment of such a device. One is legal: the constitutional basis for such cooperation. Two are political: first, the task of securing the necessary agreement to such an experiment by the politically responsible authorities on both the federal and state levels; and, secondly, the problem of maintaining political responsibility in a compact agency responsible to multiple masters.[1]

I possess no particular competence to discuss the legal and constitutional questions involved. Here I propose to address myself to the political problems involved in the federal-interstate compact and to confine myself within that subject to the special problems involved in securing approval of such a compact proposal. Accordingly, I will not attempt to discuss the political influences such a compact agency might be exposed to after its creation, to project the kinds of decision-making processes likely to emerge, or to check these against any criteria of political responsibility, to whom and for what.[2] I do not doubt the importance of such questions; they are of vital significance in determining the desirability of resource development through joint federal-interstate compact. However, these questions fall outside the scope of the topic I have chosen here.

Instead, I wish to discuss three particular subjects: (1) the procedures and problems involved in studying the political prospects for program proposals; (2) a description of a limited number of water

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1. The last-named problem may be considered to be either a political or an administrative question; it lies, of course, on the border-line between the two areas. It would seem to me, however, that the federal-interstate compact agency raises no strictly administrative questions dissimilar in character from those faced by the interstate compact agency and discussed in such studies as Richard H. Leach and Redding S. Sugg, Jr., The Administration of Interstate Compacts (Louisiana State University Press: Baton Rouge, 1959).

2. Cf. Arthur A. Maass and Laurence I. Radway, "Guaging Administrative Responsibility," Public Administration Review (1949), 182 .

resource development projects involving cooperation between federal and state governments; and (3) a set of tentative conclusions concerning the political obstacles to federal and state approval of a federal-interstate compact for water resource development.

I.

To make explicit what may already be obvious, the observations that follow are primarily the outgrowth of my research on the Delaware Valley Project, conducted at Syracuse University under the direction of Roscoe C. Martin, and charged with devising a proposal for the administration of the water resources of the Delaware River.[3] My own particular responsibility on that research project was the study of the political context of water resource development and the probable political obstacles to approval of the various possible alternative recommendations, a subject described on the Delaware Valley Project as research on the problems of implementation.

Perhaps no part of such a research effort as the Delaware Valley Project can be described as easy, but the problems of research concerning implementation seem singularly difficult. The difficulty is intrinsic to the assignment, that of predicting the behavior of a group of political figures, both legislative and administrative, when presented at some time in the future under conditions of uncertain character with a particular proposal for action. It will not therefore seem surprising that the first conclusion formulated in respect to implementation was that all succeeding conclusions would be indefinite in their nature and should be taken as indications of relative probabilities rather than certainties. Only when approaching the more extreme proposals was the high improbability of their acceptance sufficient to justify the drawing of a line between what might be approved and what almost certainly would not be.

In general two avenues of approach suggested themselves as means by which to form more accurate estimates as to the probabilities of winning acceptance for alternative proposals. The first consisted of the examination of the record of past events to see what had been done and had not been done previously, the nature of the past obstacles to action, and the likelihood that these obstacles might be circumvented in the future. The second avenue of approach involved the direct interviewing of those who would be called upon to pass judgment on the recommendations made -- state legislators, congressmen, federal and state administrators and executives-- and the posing to

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3. The report of the Delaware Valley Project has been published as: Roscoe C. Martin, Guthrie S. Birkhead, Jesse Burkhead, and Frank J. Munger, River Basin Administration and the Delaware (Syracuse: Syracuse University Press, 1960). The research was made possible under a contract with the Water Research Foundation which received a grant from the Ford Foundation.

them of questions concerning their own reaction to hypothetical alternative recommendations under varying conditions. Both procedures were employed in the research for the Delaware Valley Project; both provided valuable information; both suffer from serious defects. It is these defects, of course, that are responsible for the degree of uncertainty surrounding the conclusions.

The former approach, the study of the historical record, was pursued on two levels. Proposals for water resource developments in many parts of the country were reviewed, primarily as reported in published materials, doctoral dissertations, and the like, and an attempt made to generalize conclusions as to the forces that can be mobilized for change, the causes of success or failure, the effective veto groups in the bureaucracy and the legislature, and similar subjects. At the same time a more detailed study was made of the earlier proposals for action in the Delaware River Basin and nearby areas.

For some purposes the procedure was quite effective. From the record of past failures with interstate compact proposals in the Delaware, for example, it is possible to catalogue the sources of past difficulty, to avoid some of them, and to prepare for the others. What the procedure is incapable of doing, however, is providing answers as to the probable reception of new ideas and new formulas. Only by analogy does past experience provide a guide to the probable reception of a previously untested proposal.

The process of interviewing is not limited in this way since novel proposals can be explained in greater or lesser detail to the men who will approve or reject them, and their preliminary reaction secured. Advance contacts of this kind have the additional advantage that by producing a sense of participation on the part of those interviewed they are likely to secure a more friendly reception for the ultimate report and recommendations. This procedure was also employed therefore. After the key individuals in making decisions respecting water resource development in the states and in the national government had been identified through preliminary interviews, documentary research, and -- in the case of legislators -- roll call analysis and other quantitative techniques, an extensive program of interviewing was conducted with state legislators, congressmen, and state and federal administrators.

Again, however, the procedure is not without defects. One lies in the inability of many of those interviewed to predict accurately their own behavior, even when they wish to do so. Elective officials in particular appear psychologically disposed to react to issues in terms of (a) what other people are saying (b) about a specific proposal that has been made. When confronted with a cafeteria of choices among programs, and when expressing an opinion without benefit of consultation with others, their expressed opinions may not reliably forecast their future actions. In addition the interview approach fails to take into account the possibilities of mobilizing extra-governmental pressures to produce a climate of opinion in which new things become possible; in a ready-made phrase, the interview fails to measure the consequences of leadership.

Accordingly, the two approaches are complementary and serve to reinforce one another, each providing information unavailable through the other. The remainder of the paper will be concerned, however, primarily with the historical approach. The reason for that choice is internal to the staffing of the Delaware Valley Project. The congressional interviews, most relevant to the panel subject, were conducted by Hugh Douglas Price of Columbia University;[4] any report on them by me would be second hand. Instead, I have chosen to draw upon historical materials in the hope that they might be of interest either as an indication of the kind of reasoning that went into the conclusions respecting implementation drawn in the Delaware Valley Project report, or in themselves as generalizations concerning federal-interstate cooperative action.

The federal-interstate compact proposal involves two types of inter-governmental relations, between state and state and between states and nation. The former are not dissimilar in character from those involved in strictly interstate compacts. Since the novel and critical feature of the federal-interstate compact lies in the new relationship proposed between the federal government and the states, my analysis will be concerned primarily with that interaction. Three kinds of cases suggest themselves to me as illustrative of the political problems involved: (1) previous proposals for federal-interstate compacts in the field of water resources, particularly in the Northeast; (2) federal-interstate relationships in other fields where the compact is presently employed -- the regulation of oil production and the promotion of marine fisheries would be two examples; and (3) programs involving federal-state relationships in water resource development that are analogous to the federal-interstate relationships under consideration. Studies of all three types of situations, in greater or lesser detail, went into the conclusions formulated in the project report. I will here confine myself to the evidence available from the third type of situation.

II.

The principal basis for the conclusions that follow is provided by detailed studies of some eight water resource development projects. The eight projects are located in varying parts of the country and involve various water development functions; they share in common, however, the fact that all eight involve some sort of cooperative relationship between the federal government and the state government. The eight projects here treated are: (1) the Central and Southern Florida Flood Control District; (2) the Grand River Dam Authority in Oklahoma; (3) the Los Angeles Flood Control District in California;

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4. It is appropriate at this point to acknowledge the assistance given me on the implementation studies for the Delaware Valley Project by Professor Price as Research Associate, and by Donato Pugliese, William Shear, and Donald Baker as Research Assistants.

(4) the Lower Colorado River Authority in Texas; (5) the Muskingum Watershed Conservancy District in Ohio; (6) the New York State Barge Canal; (7) the Passamaquoddy Tidal Power Project in Maine; and (8) the St. Lawrence Seaway and Power Project as it involves the state of New York.[5]

Central and Southern Florida Flood Control District.[6]

The origins of the Central and Southern Florida Flood Control Project lie deep in the 19th Century in the various schemes to drain the Everglades and make its swamp lands available for agricultural use. Under the leadership of Governor Napoleon B. Broward the state government undertook the drainage project early in the 20th Century and between 1907 and 1939 the state's Everglades Drainage District spent some $18 million on the effort. Drainage of swamp lands was not at the time considered to be an appropriate federal enterprise and the principal federal contribution consisted of an earlier grant of the flooded lands to the state.

Financial and engineering problems halted further progress in the 1930's and between 1932 and 1947 the chief activity in the central and southern Florida area consisted of a cooperative data-gathering project involving both federal and state officials. In the latter years, however, a disastrous flood opened the way to federal action. The Corps of Engineers quickly prepared a broad, multi-purpose water control plan providing for flood control, drainage, water conservation, recreation, and virtually every other conceivable purpose except hydroelectric power generation, impossible in view of the flat terrain. The plan was approved by the Governor for the state and was incorporated by Congress in the Flood Control Act of 1948.

Since drainage was still not accepted as a fully federal responsibility the state was called upon to contribute to the costs of the project. The Central and Southern Florida Flood Control District was created by the legislature for this purpose in 1949 and authorized to levy a one mill tax on property within an area of 15,000 square miles in 17 counties of the peninsula. Additional funds are provided through annual appropriations by the state legislature. In addition to raising funds to meet the local share of the project costs, the Flood Control District constructs its own secondary drainage works,

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5. The descriptive sections that follow will be omitted in the oral presentation of this paper.

6. This account is based primarily upon John M. DeGrove's dissertation The Central and Southern Florida Flood Control Project (unpublished dissertation, University of North Carolina, 1958). A criticism of the project can be found in L. Boyd Finch, "The Florida Swamp That Swallows Your Money," Harpers, February, 1959, pp. 77-82, while an abbreviated description is included in River Basin Administration and the Delaware, op. cit., pp.242-44.

attempts to coordinate the programs of the various state and federal agencies affected by the project, and lobbies — at times unsuccessfully -- for additional federal funds to carry on the work.

Grand River Dam Authority[7]

In sharp contrast to the Florida Flood Control District the Grand River Dam Authority of Oklahoma constitutes a state project built without any expenditure of state funds. The Grand River, called the Neosho in Kansas, is a tributary of the Arkansas which drains small parts of Kansas and Missouri and a large part of rural eastern Oklahoma. Studies of the river by the Corps of Engineers in the 1920's produced a finding in House Document 308, 69th Congress, 1st Session, that no federal interest was involved.

In the absence of a federal program for development the state legislature in 1935 created a Grand River Dam Authority, authorized it to build three dams on the river, endowed it with undisputed water rights to the river's flows, and directed it to finance construction through the issuance of bonds. A major motive for the Authority's creation was the desire to secure federal relief funds and the state's hopes were not disappointed. As Senator Elmer Thomas later remarked: "... in those days in Congress, we were looking for places to spend money."[8] The Authority, referred to as the GRDA, prepared a comprehensive plan for the river's development in 1937, calling for three dams, at Pensacola, Markham Ferry, and Fort Gibson, to be operated for flood control, power, and irrigation, but primarily for power. In the same year funds were obtained for the construction of Pensacola Dam from the Public Works Administration of the federal government; 45 per cent of the cost was met by an outright grant, 55 per cent through a long-term low-interest loan.

In the meantime the water development responsibilities of the Corps of Engineers had been substantially broadened through the Flood Control Act of 1936. The Corps was directed to reinvestigate the Grand River in 1935 and reported in 1939. Although the construction of Pensacola Dam had already been begun by the GRDA, the Corps of Engineers objected to the small amount of reservoir space assigned to flood control, recommended the same three dams called for in the GRDA's plan, and proposed that Congress authorize all three, reimburse the state for its construction costs, and turn all three dams over to the Corps. In the 1941 Flood Control Act Congress took the first step by authorizing construction of the three dams (including the by now built Pensacola), but made no provision for the acquisition of Pensacola Dam from the GRDA.

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7. A brief description of the Grand River Dam Authority will be found in River Basin Administration and the Delaware, op. cit., pp. 237-39.

8. Hearings Before a Sub-Committee, Markham Ferry Project, Grand River, Oklahoma, U.S. Senate Committee on Public Works, 81st Congress, 2nd Session (Washington, 1950), p. 22.

Federal assumption of the GRDA properties occurred instead under different authority. Under its war emergency powers the federal government took possession of Pensacola Dam in November, 1941, and did not return it to state management until Sept. 1, 1946. During this period funds were made available for construction of Fort Gibson by the Corps of Engineers and it is presently in operation as a Corps dam. In the 1950's, however, the GRDA resumed its plans to construct Markham Ferry and reached agreement with the federal authorities for a grant of $6.5 million to cover the flood storage features of the dam. Examination of the hearings would suggest the strongest motivation locally for construction of Markham Ferry by the state authority was the desire to maintain the GRDA's policy of permitting development of reservoir site lands for recreational purposes under private management.[9]

The grant to the Grand River Dam Authority for the Markam Ferry project was authorized by act of Congress. Subsequent vicissitudes of the GRDA, involving law suits with the federal government and disputed power contracts with private utilities, delayed acceptance of the grant. Nevertheless a pattern of mixed federal-state action has been established on the Grand River. The Corps of Engineers assumes responsibility for releases from Fort Gibson Dam and from the storage space assigned to flood control at Pensacola, while the GRDA makes releases from the Pensacola power pool.

Los Angeles Flood Control District[10]

Impetus for a flood control program in the Los Angeles area was provided by the disastrous floods of February, 1914, which caused an estimated $10 million in damage. Since the federal government was not yet in the business of controlling floods, local action was needed if action was to be taken. By local request a Los Angeles County Flood Control District was established by special state legislation in 1915, with the County Board of Supervisors as its governing body and a territorial

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9. An editorial from the Miami (Okla.) News-Record, May 16, 1950, inserted in the record can serve as an example. After citing several reasons for preferring development by the GRDA, the editorial noted: "Most important is the GRDA's policy of permitting private ownership of cabin sites and virtually unrestricted use of man-made Grand Lake. The authority would carry out the same policy no doubt in the Markham Ferry undertaking. Army engineers usually grant leases on projects they operate. These are obtained after cutting through a maze of red tape. This practice does not encourage private ownership of improvements." Ibid., p. 10. Numerous other illustrations could be cited.

10. This report is abbreviated from Richard Bigger, Flood Control in Metropolitan Los Angeles (University of California Press: Berkeley, 1959).

jurisdiction encompassing most of the county area. The District's principal purpose was flood control; in view of the local interest in domestic water supply, however, the District adopted water conservation as a major secondar purpose, retaining flood flows in reservoirs and employing spreading devices to secure their percolation into the underground water supply.

Bond issues, secured by a general levy on real property in the District, were approved at referenda in 1917 and 1924 and a substantial program of flood control and water conservation works was constructed largely on local financial resources. The principal federal contribution consisted of an authorization to the Corps of Engineers to construct the flood control works necessary to protect the federally improved port. Political controversies surrounded the Flood Control District by the mid-1920's, however, as the district underwent two grand jury investigations, several reorganizations, and the sending of a county supervisor to prison on a charge of bribery connected with a Flood Control District construction contract. Distrust of the District's management, later abetted by economic depression, caused the defeat of bond issues proposed in 1926 and 1934. In the latter year the District's financial problems were further multiplied when the state legislature discontinued the annual appropriations for Los Angeles flood control made from 1921 to 1933.

A severe flood in 1934 provided a justification for turning the flood control problem over to the federal government. At first the Corps of Engineers employed federal relief funds to construct projects taken from the District's comprehensive flood control plan. The 1936 Flood Control Act placed federal activites in the Los Angeles area on a regularized basis. Since that time the Flood Control District has confined its activities to the construction of minor protective works not included in either the Corps program or the watershed protection program of the U.S. Department of Agriculture, the provision of funds for local cooperation required under federal flood control law, the operation and maintenance of federally constructed installations (except for Corps-built dams and reservoirs, which remain in Army hands), the construction and operation of a storm drain system, and advisory and research functions.

In two important respects, however, the Flood Control District is something more than simply the local arm of the Corps of Engineers in its flood control work. In the first place the comprehensive plan on which work proceeds today was prepared originally by the Flood Control District; the major parts of the plan were accepted by the Corps in a 1940 survey report. Since the comprehensive plan is not regarded as subject to change, the only questions relate to the scheduling of individual projects as to priority. Secondly, the role of the District as an operating agency is enhanced by the fact that substantial construction had already occurred under local auspices before the Corps appeared on the flood control scene. Despite the Army's retention of control over its own reservoirs, a significant

part of the flood control system remains in local hands. Although accurate figures are difficult to obtain, Bigger estimates that when the overall flood control program has been completed, the state and local governments willhave contributed 37 per cent of the capital costs to 63 per cent from the federal government.[11]

Lower Colorado River Authority[12]

The history of the Lower Colorado River Authority parallels in many respects that of the Grand River Dam Authority. Both were products of the depression years and both were heavily financed by the federal government, although agencies of their respective states.

The Colorado River of Texas is the second longest stream in the United States lying within the confines of a single state. Schemes for its development date back through many years; in the 1920's the Insull utility empire planned a series of hydroelectric dams on the river and one was half-completed when Insull went into bankruptcy. With private capital lacking and federal funds available almost for the asking the Texas legislature was persuaded in 1934 to establish the Lower Colorado River Authority to complete construction of the Insull dam and to regulate the river's flow in the interest particularly of flood protection, power generation, irrigation, and municipal water supply.

From the beginning the Authority (LCRA) experienced no difficulty in securing federal funds. Under its statute the LCRA was authorized to issue revenue bonds; $13.5 million were taken up by the Public Works Administration, which added an outright grant of $8 million. The Reconstruction Finance Corporation loaned the Authority $20 million; the Works Progress Administration contributed half a million dollars in reservoir land clearance; the Bureau of Reclamation spent $23.3 million on the project, largely in the form of construction of a large dam which the Bureau donated to the LCRA. Undoubtedly a factor in this federal generosity was the residence within the district of two influential congressmen: J.P.Buchanan, chairman of the House Committee on Appropriations; and J.J.Mansfield, chairman of the House Committee on Rivers and Harbors. The total state investment was a little under $15,000.

With these funds the Authority has constructed a series of six dams which together utilize the full 600 foot fall of the river for hydroelectric power generation. Operation of the reservoirs has also served almost completely to eliminate flood damage on the river. Other uses, irrigation, water supply, and recreation, have been largely incidental to these two project purposes.

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11. Ibid., p. 92

12. A more detailed account will be found in Comer Clay, "The Lower Colorado River Authority," in Emmette S. Redford, Public Administration and Policy Formation (Austin: University of Texas Press, 1956). A short description is in River Basin Administration and the Delaware, op. cit., pp. 244-251.

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Muskingum Watershed Conservancy District

The Muskingum Watershed Conservancy District is probably the most celebrated of all the local water development agencies referred to in this paper. Although the reasons for its fame are not entirely clear, the Muskingum District (MWCD) is regularly cited as an outstanding example of local government participation in a federal water program.

The Muskingum River is a tributary of the Ohio, located within the state of Ohio. The original model for its development was the Miami Conservancy District, formed in 1914 on another Ohio River tributary within the state to provide flood control for the city of Dayton.[14] The same 1913 flood that devastated Dayton and created the demand for the Miami District did severe damage on the Muskingum and produced interest in flood control measures there. Not until the late 1920's, however, was action taken; one of the curious features of the Muskingum development was the absence of a sense of crisis as an iniating factor. More significant was the factor of leadership, in particular by two men, Bryce C. Browning in Zanesville, and George Maxwell in Marietta. Their efforts to arouse interest in a river control plan generated more enthusiasm after a severe drought in 1930 emphasized the importance of water. A further factor was the desire to reduce widening unemployment through a public works construction program. Under local urging the Ohio Department of Public Works was persuaded to finance a survey of the basin; the friendly help of the state was presumably not unrelated to the fact the governor at the time was George White, a Marietta businessman.

The state contract for the survey of the Muskingum was given to the Dayton Morgan Engineering Company, the firm of Dr. Arthur E. Morgan, principal architect of the Miami Conservancy District. Morgan's report recommended a comprehensive program for flood control and water conservation, with water supply, pollution abatement, reforestation, and erosion control as secondary purposes; facilities for irrigation, power, and navigation were rejected as unnecessary. On the basis of the engineering report the state director of public works proposed the creation of a Muskingum conservancy district comparable to that on the Miami. In 1933 the Muskingum Watershed Conservancy District was created, although with substantially broader goals than the single-purpose flood control of the Miami.

In another respect also the MWCD was considerably different from the Miami District; because the flood damage centers were scattered and population was smaller, it was impossible for the local district

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13. This section is based primarily on Lyle E. Craine's dissertation, The Muskingum Watershed Conservancy District; An Appraisal of a Watershed Management Agency (unpublished dissertation, University of Michigan, 1956). Shorter accounts are contained in Lyle E. Crain, "The Muskingum Watershed Conservancy District: A Study of Local Control," 22 Law and Contemporary Problems (1957) 378-404; and in River Basin Administration and the Delaware, op. cit., pp. 239-247.

14. The Miami District is described in detail in Arthur E. Morgan, The Miami Conservancy District (New York: McGraw-Hill Book Co., 1951);

to finance the water control works through a local property assessment as had been done on the Miami. The engineering report had concluded that substantial federal aid would be needed and a plan was worked out with federal government officials for a division of costs on the basis: MWCD through property taxes, $6 million; state of Ohio, $6 million; and national government, $20 million. For a variety of reasons the local contributions were never made and the best estimate is that of the $50 million ultimate cost, the national government contributed 83 per cent, the state 14 per cent, and the local beneficiaries 3 per cent.

In actuality the Muskingum development proceeded as a federal project at federal expense. Fourteen flood control dams were built on the river by the Corps of Engineers and their reservoirs are today operated by the Corps. The principal concern of the Muskingum Watershed Conservancy District is the management of recreation at 10 of the reservoirs. The MWCD also carries on some land management functions. Its most distinctive feature is that the recreation program it carries on is self-financing on both capital and operating accounts, a situation almost unique among recreational agencies.

New York State Barge Canal[15]

The New York State Barge Canal, better known under its original name of the Erie Canal, was one of the earliest state enterprises in water development; today it is the only major navigational improvement stillunder state management. The improvement of the rivers of New York for navigation was proposed as early as 1724 by the Surveyor General of the Colony and a 1782 act authorized two private lock companies to open navigation between the Hudson River and Lake Champlain and westward to Lake Ontario and Seneca Lake, which was done with some success. In 1810 the legislature appointed commissioners to further study the matter. One was State Senator DeWitt Clinton, then Mayor of New York City. The result was the famous Erie Canal, commenced in 1817 and completed in 1825. Despite the contemporary discussion of internal improvements at federal expense, the work was carried on entirely by the state.

In 1882 the Canal was declared toll-free by constitutional amendment. By that time the tonnage carried on the canal was already declining; after 1890 it continued rapidly to decline. Some thought was given to abandoning the canal, but in 1903 the legislature approved a program to rebuild it. The construction of what was then renamed the New York State Barge Canal was completed in 1918. After World War II

14. (contd.) and in summary form in River Basin Administration and the Delaware, op. cit., pp. 234-36.

15. The New York State Barge Canal is described in Roscoe C. Marin, Water for New York: A Study in State Administration of Water Resources (Syracuse University Press: Syracuse, 1960), pp. 24-29, 77-78.

further proposals were made to modernize the canal by widening and deepening it. Although the state continued to bear the costs of operation, it was unwilling to pay for reconstruction and a federal appropriation was sought and secured. The dredging and construction work that followed was carried on by the Corps of Engineers.[16]

Today the Barge Canal remains under state management. As of 1956 it comprised 524 miles of locks, canals, and improved river channels with a minimum depth of 12 feet. Its operation is assigned to the Division of Operation and Maintenance of the state department of public works. That New York State's willingness to continue to meet the costs of canal operation -- even with federal subsidies for new construction -- is coming to an end was suggested by a constitutional referendum in November, 1959. The voters of the state at that time approved a constitutional amendment authorizing the transfer of the Barge Canal to the federal government. Negotiations concerning the transfer are now proceeding.

Passamaquoddy Power Project[17]

The preceding cases have all concerned projects in which some action was eventually taken, although not always on the terms originally contemplated. In the Passamaquoddy Tidal Power Project, on the other hand, preparations were made for federal-state cooperation on a program that was never completed.

No attempt will be made here to describe the physical details of the Passamaquoddy Power Project except to note that it involves the generation of electric power from the movement of water in an area of one hundred quare miles where the tidal rise ranges from 20 to 25 feet. The first substantial proposal for development was made by a private party, Dexter P. Cooper. After preliminary surveys Cooper proposed an international project, requiring the consent both of Maine and of Canada. Despite some opposition, based particularly on the traditional Maine policy against the export of hydroelectric power out of the state, Cooper obtained a charter from the state legislature which was subsequently approved at referendum in 1925. The following year the FPC issued a preliminary permit, but the project failed when Canada refused its consent. Cooper then developed a plan for a more limited project involving only U.S. waters. In this proposal, however, the costs were substantially higher in relation to benefits and, handicapped also by the depression, Cooper was unable to secure private financing.

16. See Guthrie S. Birkhead, "The Role of the States in Basin Water Development," unpublished ms., paper read at 1958 meeting of the American Political Science Association, St. Louis, Missouri, pp. 16-17.

17. This account is drawn from Lincoln Smith, The Power Policy of Maine (University of California Press: Berkeley, 1951), Chapter XII, "The Passamaquoddy Tital Power Project," pp. 231-271.

Cooper turned therefore to the federal government for funds in the early 1930's. He applied to the PWA, arguing the project would provide immediate work relief in the area. Despite rejection of the plan as unsound first by the FPC and then by the PWA, Democratic Governor Louis J. Brann successfully sought reelection in 1934 in Maine on a platform promising to create a Quoddy Authority and to seek federal financing. A new state commission, the Quoddy Hydro-Electric Commission, recommended its construction at federal expense and, during the campaign, Harold Ickes agreed to reconsider the project for the PWA. New favorable reports were prepared at both the state and federal levels and early in 1935 a PWA special commission recommended that $30 million be allocated to the War Department fo finance construction, and that the Maine legislature create a state power authority to lease and operate the project.

Pending legislative action, the only unit authorized to develop power at Passamaquoddy was Cooper's chartered corporation. The federal government therefore bought out his rights and plans and a bill establishing a state corporation to operate Quoddy was drafted in Washington, probably by Thomas Corcoran. Introduced into the Maine legislature, it was sharply criticized for the very broad grant of powers involved. No hearings were held and the bill died. Nonetheless, after passage of a 1935 relief billby Congress, $10 million was allotted to the Quoddy project for preliminary work to be done by the Corps of Engineers. Late in the year the allocation was cut in half and reports circulated that all work would be suspended until the Maine legislature passed appropriate legislation. Governor Brann, however, refused to call a special session to establish a Quoddy Authority. Army lawyers then prepared a new, simpler draft of a Quoddy Authority bill. Despite the reports $2 million of the reduced appropriation was restored in January, 1936, and work continued without state action.

The budget submitted by President Roosevelt to Congress in January of 1936 included $29 million for Quoddy, the Florida ship canal, and three small projects. When the House appropriations Committee dropped all five projects, Roosevelt declined to use his authority over relief funds to continue the project. A major factor in its unpopularity was the widely circulated charge of wasteful spending by the Corps of Engineers in the construction of luxurious Quoddy Village as headquarters for the operation. Efforts to revive the project in the Senate failed, the Army Engineers and equipment were transferred elsewhere, and Quoddy Village was turned over to the National Youth Administration. The state of Maine had not yet approved any sort of Passamaquoddy power agency.

From 1936 to 1939 the Passamaquoddy project languished. In the latter year, however, President Roosevelt (whose summer home at Campobello was close by Passamaquoddy) revived the project with a proposal for a further survey. In the interim the TVA decisions of the Supreme Court had appeared to clear the way for an exclusively

federal power project at Passamaquoddy and the Maine legislature was under stronger pressure than before to preserve the state character of the project. One alternative suggested was to permit development by the Bangor Hydro-Electric Company, but this was clearly unacceptable to the federal government. Another proposal to create a Washington County Authority was considered and abandoned. Ultimately a bill was drafted creating a Passamaquoddy District Authority and passed both houses without debate. The legislature's lack of enthusiasm for the project was suggested by its refusual to memorialize Congress for its completion. Governor Barrows signed the bill into law in April, 1939.

The Authority Act was drafted at the instance of the Eastport (Maine) Chamber of Commerce with the assistance both of federal officials and representatives of private utilities. Its sponsors insisted the only way in which a bill could be passed was to secure the consent of the power companies in advance. As might have been anticipated under the circumstances, the act was relatively conservative in tone. It established a five member Quoddy Authority Board to be appointed by the Governor and delimited an area of operations in easternmost Maine. Within this area the Authority could sell power for "industrial use" at its own rates. It could sell for nonindustrial uses, however, only if: (1) the State Public Utilities Commission held that such competition with existing utilities was required for the public convenience and necessity; or (2) the Authority bought out the existing companies with the approval of the Public Utilities Commission. Sales outside the district were permitted only with the approval of the Commission and at rates set to reflect business risk, depreciation, etc. The Authority was authorized to develop electricity from other sources only as auxiliary to tidal power and in no case could the amount of auxiliary power exceed the tidal plant. The Authority was not entitled to pledge the credit of the state.[18]

The Passamaquoddy District Authority, however, was never called into use. Additional engineering reports were unfavorable and, with the coming of the war, the project was shelved. New events since the war have raised the issue once more and Passamaquoddy is again pending, but these developments do not affect the distinctive history of the experiment of the 1930's with federal-state partnership at Passamaquoddy.

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18. The Authority was, on the other hand, exempt from taxation and the law guaranteed continuation of this exemption until the Authority had met all its obligations with interest. It was also exempted from the operation of the Fernald Law that would have prohibited interstate transmission of the power. In addition the Passamaquoddy District Authority was authorized to serve as a quasi Port Authority, with wharf and storage facilities, and as a water district to bring in fresh water supplies; both provisions were intended to facilitate industrial development. Ibid., pp. 258-60

St. Lawrence Seaway and Power Project[19]

The St. Lawrence River provides one of the great hydroelectric generation sites on the North American Continent and, indeed, in the world. The remarkable quality is the steady flow of the river; the maximum flow of record is only a little more than twice the minimum flow. This means that a very high proportion of the power developed can be guaranteed as "firm" power and without the necessity for a large storage reservoir.

The first hydroelectric plant in the International Rapids section of the St. Lawrence was completed at Massena, N.Y., in 1901, but a major power development was not proposed until 1914 when the question was raised by the United States government. Not until 1918 was Canada prepared to proceed to consideration. In that year and again in 1921 the New York and Ontario Power Company applied to the International Joint Commission for a license to develop power on the St. Lawrence; the company was not finally refused until 1933. The intervening period was occupied by a long and at times bitter struggle between the advocates of public power and those favoring private development.

Within the United States the critical question turned not on a federal vs. a state development, but on whether the power would be developed by a state agency or by a private utility. Through the 1920's New York State was deadlocked between its public power governors, Alfred E. Smith and Franklin Roosevelt, and a private power Republican legislature, but in 1931 Governor Roosevelt succeeded in securing legislative passage of a bill creating the Power Authority of the State of New York, specifically authorized to undertake development of the St. Lawrence for hydroelectric power.

The creation of the Power Authority settled the question of who was to develop the power on the U.S. side of the St. Lawrence; it did not permit immediate development, however. Since the St. Lawrence was an international boundary, its development for power depended on approval by the joint American-Canadian International Joint Commission. And that approval was conditioned upon resolution of the controversy surrounding the proposed construction of a 27 foot ship channel, the St. Lawrence Seaway. In 1932 a treaty was negotiated between the U.S. and Canada providing for construction of both the seaway and a hydro power plant at Barnhart Island. It received majority support in the U.S. Senate, but not the two-thirds majority required. In 1941 an executive agreement was negotiated between the two countries, requiring implementation only by parallel legislation, i.e. a simple majority in each house of Congress would do. The

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19. This description is based on Rudolph S. Comstock's dissertation, The St. Lawrence Seaway Project: A Study in Presidential Leadership (unpublished dissertation, Ohio State University, 1956); T.L. Hills, The St. Lawrence Seaway (Praeger: New York, 1959); and Roscoe C. Martin, Water for New York, op. cit., pp. 39-45, 196-204.

war delayed action and when in 1952 the congressional committees again refused to act, Canada withdrew from the agreement.

Having failed first with a procedure requiring approval by two-thirds of the Senate, and then with a procedure requiring majority support in each house, the U.S. government now made a third attempt with a procedure requiring less than a majority, only congressional unwillingness to act. In 1952 the U.S. and Canadian governments submitted identical applications to the International Joint Commission for approval of a hydroelectric power project in the International Rapids section. After the Commission approved the applications, the Federal Power Commission assumed jurisdiction to issue a license for the U.S. section of the project.

The Power Authority of the State of New York had remained on the sidelines through these negotiations, although actively encouraging action to open development of the St. Lawrence and expressing continued interest in administering the project. It was the Seaway rather than the power project that produced the controversy of the 1930's and the 1940's, but both the U.S. and Canadian national governments had been unwilling to proceed first with the power project for fear of losing support for the Seaway. In 1948 the New York Power Authority filed an application with the FPC for a licence to proceed with development. Initially denied, the FPC approved this application following the action of the International Joint Commission. The position of the state Power Authority as a candidate to develop the power was undoubtedly enhanced by the failure of Congress to act affirmatively, although no serious challenge was ever made to state development after 1931. Before final approval of the New York Power Authority license by the Supreme Court in 1954, the political situation in Congress had changed and the Wiley-Dondero Act of 1954, creating the St. Lawrence Seaway Development Corporation, opened the way for parallel development of the Seaway by the U.S. and Canadian national governments at the same time New York State and the province of Ontario were constructing the power facilities.

The Power Authority's share of construction costs was underwritten through the issuance of revenue bonds. The final cost of the projedt was divided roughly in quarters among the four participants, the United States, Canada, New York State, and Ontario. Management of the project is likewise divided with the Power Authority of New York State retaining operating control of its own power facilities under the general direction of an International St. Lawrence Board of Control charged with responsibility for regulating the discharge of watet through the St. Lawrence project, taking into account the effect of releases both on lake levels above the works, and on the St. Lawrence River below.

III.

Eight water development projects involving federal and state cooperation have been described. In one of the eight, Passamaquoddy, the project was ultimately abandoned. In each of the other seven a state or local governmental agency still exists, playing a greater or lesser part in the development of the water resources involved. Not all instances of federal-state cooperation have such happy endings from the state viewpoint; the Middle Rio Grande Conservancy District in New Mexiso or the California state authority intended to develop the Central Valley Project (and others as well) might have been examined and used to demonstrate the absorption of the local unit by the national government.[20]

Nonetheless, the eight cases are sufficient to confirm one conclusion at least. Judged by the successful experiments with federal-state cooperation in water resource development, there is no intrinsic obstacle to federal-interstate cooperation of a similar character. It is true that a number of the instances cited are old, dating from the thirties, but others are relatively recent. Among the projects described the Central and Southern Florida Flood Control District, the New York State Barge Canal, and the St. Lawrence Power Project all represent cooperative programs developed since World War II, while the Markham Ferry project of the Grand River Dam Authority has enlarged upon earlier cooperative undertakings. And other projects, such as Oroville Dam in the state of California's Feather River Project, could readily be added to the list.

The simple demonstration that federal-state or federal-interstate partnership in water resources development is possible is, however, less significant than the indications found in the cases of the circumstanced under which it takes place. Concerning this point, the following tentative generalizations are advanced:

1. Federal-state cooperation in water resources development projects has not produced joint administration of the projects when completed. Joint administration is here defined as possessing the same meaning as in the proposals respecting a federal-interstate compact, that is, operation under the direction of a single board or commission containing representatives of both the state and the federal governments. In none of the eight cases described has such an arrangement been made.

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20. The latter episode is described in detail in Arthur D. Angel's dissertation, Political and Administrative Aspects of the Central Valley Project of California (unpublished dissertation, University of California at Los Angeles, 1944).

The conclusion is perhaps not too surprising and may not altogether stand as a precedent at the interstate-federal level. Although constitutionally there would appear to be no difference in the relationship between the federal government and one state, and the federal government and several states, and the same pattern could presumably be employed in either situation, psychologically the situations would seem quite different. It is at least plausible that federal legislators and administrators would be more willing to consider a division of administrative responsibility with the representatives of several states than with the representatives of one.

2. Where cooperation in administration has occurred between the federal and state governments, it has been accomplished by a division of functional responsibilities between the two. This is the formula for cooperation that has been employed in varying ways in the Central and Southern Florida Flood Control District, in the Grand River Dam Authority, in the Los Angeles Flood Control District, in the Muskingum Watershed Conservancy District, and on the St. Lawrence Project. In Florida the Corps of Engineers and the Flood Control District divide their activities along the lines of major and minor drainage works; on the Grand River the Corps controls flood storage releases from Pensacola and the GRDA releases from the power pool; in Los Angeles the Corps operates certain reservoirs and the local district operates the rest of the reservoirs and the other facilities; on the Muskingum the Corps administers the reservoir system while the MWCD directs the recreational program; on the St. Lawrence the Power Authority operates the power facilities while the federal Development Corporation directs navigation. The formula for dividing the work has taken various forms, and other instances might be added. The Arizona Power Authority, for example, distributes power generated at federal dams; or the Metropolitan Water District of Southern California distributes water supplies stored at federal reservoirs.

I am not here concerned with the desirability of such arrangements -- they have been sharply critized by many, including Robert Moses of the New York Power Authority who has strongly objected to the St. Lawrence situation -- but rather with the fact that this has been the regular form that federal-state cooperation in administration has taken.

3. Federal-state cooperation has also taken the form of outright federal grants to an agency of the state which retains operational control. All of the eight cases analyzed fall either in this category or in category 2 above, although one, the Grand River Dam Authority, seems almost on the line between the two. These federal grants have taken various forms; in some cases they have been construction by the federal government of works then turned over to the state agency for operation, as in the case of the Barge Canal and as planned at Passamaquoddy; in other instances money has been advanced either directly or in long-term, low-interest loans to the state agency to do its own building, as in the case of the Grand River Dam Authority. (The Santee-Cooper project in South Carolina, financed on the same 45-55, federal grant and federal loan, basis as the GRDA

be an additional example.)[21] The Lower Colorado River Authority in Texas received assistance in both forms, cash and construction.

The federal grants to state agencies have been of varying generosity. In the 1930's a number of projects were built almost 100 per cent at federal expense, the Grand River Dam Authority, the Lower Colorado Authority, the Santee-Cooper Project, and others not previously described; this apparently was the procedure intended at Passamaquoddy. More recently the federal government has adopted more conservative fiscal policies and scaled down its grants. Thus the Los Angeles Flood Control District, unlike the Muskingum, is required to meet the costs of local cooperation on flood control; the Central and Southern Florida Flood Control District puts up a part of the construction money on that project; and New York State is left to bear the costs of operating the Barge Canal as well as financing the power share of the St. Lawrence project. The general pattern that has emerged in recent years calls for federal financing of navigational improvements (which includes only new construction on the New York State Barge Canal) and of flood control features. Water supply and hydroelectric power have generally been left to state bonding. This is the formula applied to Oroville Dam in California's Feather River Project and to the Markham Ferry project of the Grand River Dam Authority as discussed above. (This was also the formula proposed in the early 1930's for sharing costs between the federal and state governments on what was then expected to be the state of California's Central Valley Project.)[22]

4. Continued state participation in water resource administration has been greatest where hydro power generation has been a major purpose of development. Initially state or local water enterprises were concerned with a wide variety of functions: the Los Angeles district with flood control; the muskingum Watershed Conservancy District with recreation and land management; the state of New York with nagivation; the Middle Rio Grande Conservancy District might have been offered as an example of a state-created agency concerned with an irrigation program. Where facilities have already been constructed, the local unit may continue to operate them, but the Los Angeles flood control district has made no substantial independent expenditures on flood control works

21. The Santee-Cooper project, primarily for hydroelectric power generation but with incidental navigation benefits, is described in Christian L. Larsen, South Carolina's Natural Resources: A Study in Public Administration (University of South Carolina Press: Columbia, 1947). A critical picture of the project, written from the private utility viewpoint, is contained in Henry Savage, Jr., River of the Carolinas: The Santee (Rinehart and Company: New York, 1956), pp. 346-363.

22. Arthur D. Angel, op. cit., pp. 41-50.

since the federal government assumed responsibility in the 1930's, New York State is currently seeking to transfer its canal to the federal government, and the Middle Rio Grande Conservancy District was taken over by the U.S. Bureau of Reclamation in 1955.[23] Where local agencies have flourished, have expanded, and have initiated new programs they have been concerned with power. Cases in point are the Grand River Dam Authority, the Lower Colorado River Authority, and the Power Authority of the State of New York. The Florida Flood Control District is a reminder that power is not indispensable to state enterprise, but hydro power remains the principal justification for state partnership in federal-state programs.

In the 1930's this role of the state was in large measure the result of federal doubts as to the legal and political propriety of the federal government's engaging in projects geared primarily or exclusively to power generation. Thus it was assumed that New York was to develop the power of the St. Lawrence; the struggle was between private companies and the state. And the state of Maine was virtually dragged into participation in the Passamaquoddy Power Project. Today, however, two other causes seem to be more significant in giving continuing impetus to this state role in power development. They are summarized in the next two propositions.

5. State investment in power generation is encouraged by its self-financing character. One conclusion of the Council of State Governments survey of state programs in water resource development was the general unwillingness of state governments to make substantial expenditures in this field.[24] Hydro power generation, on the other hand, is one aspect of resource development that not only can pay its own way, but may even produce a profit that can be used for other purposes. Through the use of revenue bonds improvements may often be financed without adding to the state's debt.

Not every state is, of course, willing or able to invest in power generation; the possibility of financing through revenue bonds and recovering costs and perhaps more through sales will make it attractive to some. The one area of success for the notably unsuccessful Eisenhower partnership policy resulted from this fact. Partnerships with private utilities were defeated in Congress. The only fields in which local governments were willing to go partners with the federal government were power--in the Pacific Northwest and on the Grand--and water supply and power (Oroville Dam in California). It is relevant to note that the Muskingum Watershed Conservancy District, although not engaged in power operations, operates one of the few self-financing recreational programs and occupies therefore a similar place in its state's fiscal position.

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23. Office of the New Mexico State Engineer, An Unofficial Summary of Early Water Development in New Mexico (ms., State Capitol, Santa Fe, no date).

24. Council of State Governments, State Administration of Water Resources (Council of State Governments: Chicago, 1957).

6. The principal incentives for local governmental participation in resource development today are the desires (a) to speed up the pace of federal development; and (b) to secure a local exception from general federal resource policy. Before present patterns of federal fiscal responsibility were clearly established the state governments were affected by a different set of pressures to act; where they responded to those pressures and established resource programs their own momentum may carry them on even today. These, however, appear to be the two principal motives for local participation in resource development today.

One of the principal motivations for the formation of the Grand River Dam Authority in the 1930's was the belief that the project could be put underway more quickly if the state established an agency and borrowed money from the federal government than if direct federal action were sought. It seems probable that something of the same spirit attended the formation of the Lower Colorado River Authority and the Muskingum conservancy district. And in the broadest sense this was historically the reason for the original construction by the state of New York of the forerunner of the present Barge Canal, the Erie. Instead of waiting for the federal government to begin spending for internal improvements, the state built its own canal. As the pace of federal spending increased after World War II this became a less common motive for state action, but the earlier situation returned with the "no new starts" policy of the Eisenhower Administration. This policy meant, with particular application to the Pacific Northwest, that if there were to be new hydro-electric generating plants, the local authorities would have to build them. This sort of incentive for state (or interstate) action presumably varies in intensity with the current budgetary policy of the national government.

The second principal incentive for state action is, however, more consistent in its application. The state may be moved to act by a desire to escape locally the full rigor of the application of federal resource policy. Most commonly this has meant the effort to alter the provisions of federal power policy--in particular, the desire to break the preference clause. This motive was less clear in the earlier cases reported, the St. Lawrence project, the Lower Colorado, and the Grand River Dam Authority, although it is a fact that at various times the GRDA has been subject to utility domination[25] and that the sale policy of the Power Authority of New York provides considerably less encouragement to the development of publicly owned utilities than the federal preference clause.[26] Both the Lower Colorado and the Grand River

25. The Grand River Dam Authority has no statutory preference clause but, "as a matter of policy," considers the needs "of REA's municipalities, and industries, in the order named." Letter from Q.B. Boydstun, GRDA General Counsel, Aug. 7, 1958.

26. The federal preference clause assigns first preference in sales to publicly owned utilities; the state clause assigns preference to use by domestic and rural consumers, and makes sales to industry "a secondary purpose." The problems involved in the actual allocation of power from the St. Lawrence by the state authority are recounted in a case study contained in Roscoe C. Martin, Water for New York, op. cit., pp. 201-226

authorities, however, have maintained generally good relations with the local friends of public power, and the original creation of the New York Power Authority--with its distinctive preference clause--was considered a victory for public power and Governor Roosevelt.

In the Passamaquoddy case the power situation is found in its purest form; the state statute was actually drafted with the assistance of the private utilities and the state agency was intended to provide protections for private power lacking in the procedures of Mr. Ickes' Department of the Interior. Other more recent attempts of the same sort might be cited; what is not clear is the extent to which the Congress is likely to tolerate such deviations from standing policy and the extent to which Congress is likely to make federal funds contingent upon the acceptance of federal power policy. None of the recent cases provides clear guidelines. The St. Lawrence case was atypical in that the state role in development and its critically different version of the preference clause were inherited from 20 years in the past. The Niagara development, also involving the Power Authority of New York State, was likewise atypical in that no federal funds were involved; the partial application of federal preference is the more striking therefore. The Markham Ferry project was approved by Congress even though the statute creating the Grand River Dam Authority does not stipulate preference; in practice the GRDA has established friendly relations with the local publicly owned utilities and was not attacked by them. Similarly, the Oroville Dam can not be considered a precedent; the state of California proposes to sell the power developed at a federally subsidized dam to a private utility, but the overall plan of development will involve a power deficit, and the state will buy back for pumping more power than it sells. The only thing that does appear clearcut is Congress' rejection of federal partnership directly with private utilities; the Trinity River fight would seem to have settled that issue. The extent to which a state or interstate public power agency may depart from federal power policy and still obtain federal subsidies is yet unknown.

The basis of state development in the desire for a distinctive local policy on resource use is not confined to power, however. Some proposals for state action in the West have been grounded on the desire to circumvent the 160 acre limitation on irrigated lands enforced in federal policy, while a reading of the testimony taken on the Markham Ferry project of the Grand River Dam Authority makes clear that one of the strongest local motivations for preferring state action was the desire to avoid what was then a more restrictive federal policy on reservoir recreational development. The Muskingum Watershed Conservancy District can, in another sense, also be identified as a local agency following recreational policies contary to federal practice.

IV.

No doubt other generalizations might be drawn from the evidence and certainly additions might be made to the list of projects reviewed. These are perhaps sufficient, however, to indicate both the kind of reasoning employed on the Delaware Valley Project in drawing conclusions concerning problems of implementation and to suggest some of the specific problems involved in the federal-interstate compact approach. Summarized and applied to the question of federal-interstate cooperation in water resource development, they might be stated thus:

1. The pressure for interstate action is likely to come particularly from those who seek exceptions from federal power policy.

2. Another source of pressure for interstate action, the desire to speed the pace of development, will vary in impact with the levels of federal expenditure on public works.

3. The willingness of the states to participate in an interstate resource program will depend primarily on the extent to which it can be made self-financing and supported through revenue bonds.

4. Since the most dependable source of revenue for a water development agency is the sale of hydro-electric power, the feasibility of interstate development will vary with the extent of the project's power component.

5. The most probable arrangements for federal-interstate cooperation would be:

   A. The creation of an interstate agency that would receive a subsidy from the federal treasury to cover those project costs attributable to flood control, navigation, and other federally subsidized benefits;

   B. The creation or use of parallel federal and interstate agencies with responsibilities for development divided and assigned to each by agreement.

6. The extent to which federal support would be dependent upon acceptance of federal power policy is as yet highly uncertain; the greater the deviation from existing practice, the greater the difficulty in securing funds would be.

7. The least likely arrangement would be a single resource agency with representatives from both the federal and the state governments.

In a sense the last conclusion was obvious from the start. A study of past experience is unlikely to produce a belief that an untried proposal is most likely of success (though such an outcome is not impossible). While obvious, the conclusion is realistic. Law-makers are almost as much creatures of precedent as judges, and what has been done before is the most likely prospect as to what will be done the next time. What the conclusion does call into question is the value of an analysis of political feasibility and the use that can be made of the conclusions reached.

This is a subject to which some attention was given in the final chapter of the Delaware Valley Project report. I must confess that I was responsible for the inclusion within that chapter of a statement I would here like to disavow. Discussing the proper relationship between considerations of politics and the project's recommendations I wrote:[27]

> At one extreme every possible alternative could be examined in terms of its political feasibility and the solution politically most popular chosen in each case. Well done, such a procedure might succeed in producing a report recommending precisely what would have happened in the absence of a report.

The remark seemed rather clever to me at the time, but I am now less impressed by its validity. In one sense the most likely eventuality at any time is nothing; that is, the maintenance of the status quo without change. The whole purpose of studying the problem of implementation is to minimize the possibility that this alternative will win out; even a set of recommendations that were tailored entirely to considerations of political expedience would have utility from one value standpoint if they secured action on the substantive program of development sought.

What the set of propositions concerning political feasibility advanced above does permit is a ranking of the various alternative proposals for action in terms of their likely ease of approval. Ignoring a number of possible alternatives not referred to in the analysis above, they suggest that the alternatives might be rated from the easiest to get to the most difficult as:

1. Nothing; no change in institutions and no program of resource development.

2. A program of development within the existing institutions.

3. A program of development by an interstate agency with federal financial assistance or by parallel federal and interstate agencies. (The evidence discussed does not permit a discrimination between the feasibility of these two alternatives).

27. River Basin Administration and the Delaware, op. cit., p. 364.

4. A program of development within the institutional arrangements described in 3, but involving a departure from existing federal power policies.

5. A program of development by a federal-interstate compact agency.

6. A program of development by a federal-interstate compact agency, but with a departure from existing federal power policy.

The more accurately the studies of implementation are done, the more precise and certain such rankings may be. But in themselves they provide no recommendations for action. The decision that administrative reorganization is indispensable and should be sought even though it may make approval of the substantive project more difficult is a decision that may be made, but must be based upon other criteria. The choice between seeking half a loaf and seeking the whole loaf cannot be made by means of studies of political feasibility; such studies can, however, permit more accurate discriminations between one-quarter, half, three-quarter, and whole loaves.

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CONSENSUS IN A DEMOCRATIC SOCIETY

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel
September 8-10, 1960

A democratic society is distinguished from the traditional societies of the ancient and medieval periods by three characteristics: (1) It allows and invites the free play of political opinion and social forces and arms the citizen with an ultimate authority over the government by giving him the right to vote. Universal suffrage was gradually established in all Western democracies and was an initial endowment of our constitutional democracy. This essential instrument of equality in the political realm was a resource of justice in all democracies, tending to level down all inequalities in the economic realm. It involved, of course, the hazardous distinction between the authority of government per se, which had the implicit consent of all citizens, and a particular government which was established by the consent of the majority; and which fell when this explicit consent was withdrawn. The perils of anarchy in this competition between various political forces and parties, seeking to make and unmake particular government, are obvious. The hazards prove that the unity of the society must be based upon a consensus, either deeper than the party conflicts or expressing itself within the divergent convictions, passions and interests of the "limited war" of party government.

(2) Democratic societies do not, and cannot, compel cultural and religious uniformity or even consensus in that depth of culture from which the basic notions of justice and community, of right and wrong are drawn. All western democracies are culturally and religiously pluralistic. They are saved from anarchy and disunity, both by the consensus which manifests itself within the cultural and religious differences and by forms of social cohesion, geographic and ethnic, which might be defined as natural and organic forms of consensus.

(3) Western democracies allow a free competition between economic interests and forces on the theory that justice can be achieved through the free market in the economic realm. It is this economic freedom of competitive enterprise which was based upon the assumption that the market would level down all traditiona inequalities, but which actually operated in many instances to accentuate the distinctions between strength and weakness, and caused the first great rift in the consensus of free societies of the West and prompted the victims of the injustices of early industrialism to rebellion under Marxist auspices. It was one of the achievements of Western democratic societies to use the equality of political power as an instrument of justice against the inequalities of economic power, and to permit the organization of power by the workers to establish a tolerable equilibrium of power, which is the primary prerequisite of justice. Thereby a sufficient consensus, amidst the inevitable ideological differences is gained, to guarantee the unity of the Western communities against the divisive tnedencies of rebellious classes, who had lost confidence in the essential justice of the democratic process.

In every one of the permitted divergencies of a democratic society, it is obvious that the differences might lead to the disunity of the community, if a consensus did not express itself below and within the realm of the differences. In short a free society is no simple achievement. It is not possible unless the various types of consensus are not thick enough to guarantee the unity and solidity of the community so that there can be a free play of competitive ideas and forces.

II. Types of Consensus Below the Level of Explicit Agreements

Before considering the necessary forms of consensus which must be effective within the realm of conscious differences, it is well to survey those unconscious forms of consensus, which are equally necessary for the unity of the community, whether traditional or democratic. The most obvious form of communal cohesion, necessary for both types of community, is ethnic homogeneity. The second and probably derivative consensus is linguistic homogeneity. The sense of kinship and a common language are the two most important forces of consensus, bothin the primitive community and in the modern national community. Not only the invention of gunpowder but the invention of printing, were potent sources of establishing the integral community of the nation in its contest with both the super-national communities of the medieval empires and the sub-national communities of the feudal-manorial system. For the printed word served both to eliminate the divisive elements of varying dialects and to bind the community through a system of communication. Professor Arthur Schlesinger has established the potency of the pamphlet in arousing a common sense of community among our thirteen colonies and in creating a common resentment against the imperial overlord. It is significant that a common language and a basic Anglo-Saxon homogeneity were the implied factors of consensus in establishing our nation. This factor remained powerful even after we became a "melting pot" for the nations of Europe. The common language and the absence of localised differences of the ethnic groups prevented ethnic and linguistic factors from becoming sources of a disunity. Our immigration laws, giving preference to "Nordic" ethnic elements, as late as the immigration laws of 1921 and 1929 (See Oscar Hanklin, "The Newcomers", page 41) reveal the unconscious or partly conscious anxiety of the new nation about the divisive elements in ethnic heterogeneity. Our long political and moral struggle about the equality of our Negro citizens, particularly from the civil war to the Supreme Court decision of 1954, was occasioned not only by the specific issue, regarding the previous "condition of Servitude" but by the fact that the Negro more obviously diverged from the basic type than any other group.

III. Types of More Explicit Forms of Consensus

Above the level of these implicit and unconscious forms of consensus, we must analyse two forms of consensus, effective on a more conscious level.

(1) The first is equally necessary for both traditional and democratic communities. It consists simply of a common sense of loyalty to the community and a confidence that the government and/or state is the legitimate mouthpiece of the community. This basic loyalty to the community is the most important cement of cohesion. It is instructive that in the traditional communities, a government whose authority was not challenged and had the "implicit consent of the community to speak for it," created a form of "legitimacy," not as distinct from democratic legitimacy as democratic idealists assumed. Traditional governments, as democratic

governments, could not, of course,rule without force as an Ultima Ratio; but they were absolved of the necessity of basing their authority merely on "force and fraud" (cf. Ferrero, "Principles of Power"). It is interesting to note that in democratic communities, idological differences became most acute when one or another party was able to accuse the other party of disloyalty. In our own nation, the growing differences between Jeffersonian "Republicans" and Hamiltonian "Federalists" were not disruptive of the new federal union because both sides were equally devoted to the federal union and could prove their loyalty by past history. It was certainly revealing that the conservatives tried to challenge Jefferson's influence by insinuating his lack of loyalty to the constitution, a charge which Madison could easily refute. The first leaders of the new American nation, whatever their party (and parties developed even under Washington's ostensibly non-partisan administration) could offer historic proofs of their loyalty. In short, patriotism is the most obvious form of consensus for both traditional and democratic communities. But closely related to patriotism is confidence in the government as a legitimate organ of the community and as instrument of its order. In traditional governments no more is demanded of government than that it protect the community from external peril and from the internal peril of anarchy. The ability to preserve domestic order is a source of its prestige; and the prestige is equally necessary for traditional and for democratic communities. When, as in the case of our civil war, the domestic peace of the community was imperiled, the government was forced to resort to military force, both to establish the unity of the community and to assert its prestige.

(2) The second form of consensus is expressed in the general attitude of confidence of the community toward the government as an organ of justice. Confidence in the government as an instrument of justice is operative in both traditional and democratic communities. The proof of this fact is given by the history of revolutions against traditional governments, particularly the revolutions of 17th century England, 18th century France and 20th century Russia. In all these cases, the government lost its authority and the community became divided because a portion of the community resented the injustices which had been the price of order in traditional communities. These resentments arose significantly when classes in the community, hitherto powerless, obtained sufficient economic or social power to challenge the hierarchical organization of the community. It is necessary to make "justice" one of the sources of prestige for government, even though no one has ever succeeded in giving a specific content to Aristotle's definition of justice as the disposition "to give each man his due." Generally speaking modern democracies arose under the slogans of liberty and equality. This means that the newly endowed classes found traditional governments, both too restrictive and too uncritical in their failure to relate social function to privilege. Primarily their failure was in making both function and privilege hereditary possessions. In consequence, revolutionary movements conceived either liberty or equality as simple historical possibilities, rather than as regulative moral and political principles. This abstract equalitarianism and libertarianism robbed the French revolutionary movement of a stable consensus for almost a century.

In a democratic society, the consensus which depends, not upon uniformity, in defining the nature and degree of either equality or liberty, but on confidence that a free play of political forces will in the long runmake for justice, must be distinguished from the consensus which is necessary and may be discerned within the free play of these competitive ideas and forces. It is a consensus which expresses itself in the implicit consent, which the various factions in a free society give to a mode of government, which allows particular governments to be established and overthrown by the giving and withholding of explicit consent. The source of this confidence and implicit consent is the ability of the government, with such hazardous alternations of particular governments, to preserve the stability of the community and to establish justice in the long run and in the wider view.

But all these forms of confidence and consensus in a democratic community are not possible if there is not a measure of consensus within, rather than below or above the free play of competitive or even contradictory social and political forces. We are thus brought by what may seem a circuitous route to the real issue of the problem of consensus in a democratic community. That problem concerns the measure of consensus within the very differences of opinion and interest which are allowed free play in a democratic society. This is the core of the problem of consensus. For if the differences are too wide, the party conflict may become so acrimonious that each side accuses the other of disloyalty to the common good. And if there is no consensus in the religious and cultural traditions which are effective below the level of political conflict, contradictory moral and religious convictions may also destroy the unity of the community, as indeed they did in the new state of India.

IV. The Problem of Consensus within the differences expressing themselves in a free society on the cultural, political and economic level of community.

(A) The Problem on the Religio-Cultural Level

Only our own nation made religious liberty a basic form of freedom in a democratic society as one of the foundations of liberty itself. And even in our own nation it was thought wise to offer the framework of religious liberty not in the Constitution but in the "Bill of Rights" which formed the first and more important amendments to the Constitution, once the adhesion of the various states to the federal union was established. In Europe, the idea of religious liberty had a more tortuous history. When Renaissance and Reformation destroyed the religious unity of European culture, the religious wars were ended in the treaty of Westphalia only by the expedient of guaranteeing the unity or uniformity of the integral community through the principle of cuius regio eius religio. The faith of the prince determined the nature of the particular version of religion which could be professed in the integral community. In France the religious wars of the 16th century proved the impotence of this principle to contain the danger of civil strife arising from religious differences. These dangers prompted Jean Bodin to accentuate the principle of monarchial absolutism, which had indeed been the instrument of the gradual emancipation of the French nation from Papal rule. Bodin used it to secure the unity of the community against the perils of civil strife, arising from the religious diversity of the nation. Religious unity was indeed preserved until the 18th century revolutionary movement challenged both the established religion and the traditinnal order, armed with the secular idealism and utopianism of the Enlightenment, the last fruit of the Renaissance.

In Great Britain religious pluralism was delayed because the Tudor monarchy, the agent of English autonomy from papal rule used the quasi-Catholic Anglican establishment as an instrument of its unity. The war with Spain under Elizabeth's reign placed Catholics under the suspicion of disloyalty to the nation, and the Puritan sects were suppressed because of their radical opposition to monarchy. But the Elizabethan settlement could not prevent the political and religious conflict of the Cromwellian revolution. The multitude of the sects in the Cromwellian army, created the necessity of toleration as an instrument of national unity, though only the independents fervently believed in toleration. The restoration under Charles II established the Anglican church again but did not snuff out religious toleration, which gradually, like liberty, "broadened down from precedent to precedent."

The religious liberty guaranteed in our first amendment was the consequence of the multitude of Christian sects in the American colonies; and of the religious and secular theories of toleration first elaborated by Roger Williams of

Rhode Island and of William Penn in Pennsylvania, and of the disestablishment of the Anglican church in Virginia, encompassed by Jefferson's deistic rationalism and the radical Presbyterians of the "great awakening" for whom Madison was the political spokesman.

Despite the fact that religious toleration was prompted by necessity, that is the multiplicity of the sects in the colonies and by rational and religious theories of toleration, it should be observed that the toleration would not have been possible in the long run, if the various religious traditions did not exhibit a certain consensus under and within their differences. Where this consensus is lacking (as it was, for instance, in the new state of India) tolerance may become strained and the divisive possibilities of pluralism may threaten the community. The three main religious traditions of our nation have a consensus because they are all drawn from a common Biblical source. The religious and theological interpretations may be very great but the moral convictions are not so great. The community is, of course, particularly interested in a moral consensus, which is the basis of all its politiaal morality. The most obvious consensus is on the institution of monogamy. This consensus is so solid that when the Mormons claimed the right of practicing polygamy in the name of religious liberty, they were refuted by our Supreme Court, despite the fact that our Constitution did not ordain monogamy as our standard. The Mormon experience rather proves the thesis of the late Charles Curtis, that every nation has a kind of "natural law" of its own, composed of various congruent and even incongruous traditions. (Charles Curtis, "Law as Large as Life", Simon and Schuster, 1959). Where the traditions are different, as for instance in the Catholic standard of the indissolubility of marriage and in its prohibition of birth control, some minor frictions occur, though not serious enough to shake the basic consensus. Nor does the Protestant individualism, in dealing with problems of justice, contrasted with the more consistent emphasis on political control in the Catholic and Jewish tradition offer a greater hazard than to furnish some grist for the mills of party conflict between the more collectivist and more libertarian parties, which we must consider in another context, that of the problem of consensus in political and economic debate in a free society.

An important consensus between the biblically oriented religious tradtions is the common conviction that historic responsibilities are important because our life in history is meaningful. In this, the Western religious tradtions differ from the mystic other-worldly religions of the Orient. This consensus furnishes one basis for the historical dynamism of the Western world. It also makes for the dubious by-product of this dynamism, namely fanaticism. For it is difficult to relate historic tasks to the religious sense of an absolute good, as given in the "Will of God", without confusing the absolute with historically conditioned values and historically proximate ends. The Catholic form of the Christian faith always threatens to disturb this consensus by its belief in an inflexible "natural law", which can be adjusted to historical contingencies only with great effort. Liberal Protestantism and secular liberalism imperils the consensus by their various forms of utopianism, that is, by the hope of establishing a reign of perfect justice on earth. In thecase of liberal Protestantism and some forms of secular idealism, the utopianism is "soft", expressing itself in unwillingness to participate in any of the morally ambiguous strategies of government, property and war by which men seek to establish a relative justice, a tolerable order in security in a world of self-seeking men, and particularly of self-seeking communities.

The fact that there has not been much difference between liberal Protestantism and secular humanism on the problem of utopianism, and the fact that the Jacobin type of utopian fanaticism made democracy difficult in France and presented the world with a prelude of communist fanaticism, proves, inter alia, that we must deal

not only with the three great religious traditions, but with the secular humanism arising in the Renaissance and having its impact upon our political institutions in the period of the Enlightenment. Crane Brinton (in his "History of Western Morals", Harcourt, Brace and Co., 1959) is quite right in placing the Enlightenment in the general category of "Christian idealism". We needed the radical emphases of both sectarian Protestantism and secular idealism to challenge the traditional injustices of the old agrarian-monarchial societies, usually sanctified by complacent forms of religious faith, whether Catholic or Protestant: but we had also to guard against the utopian fanaticism of both these forms of faith, as expressed in both the Cromwellian and the French revolution. One of the virtues of the give and take of a free society is that it separates truth from error in all the traditions by the creative effect of common experience. Our own Jefferson was, in some respects, as utopian as some of the French Jacobins, and some of his illusions about man and society were as soft as those of Locke. But in the party conflict of the new nation, Jefferson learned something from the "realism" of his arch foe, Hamilton. The latter did not learn from Jefferson; but, fortunately, James Madison, basically in agreement with Jefferson, but sharing Hamilton's enthusiasm for the Federal Union, provided both a personal and constitutional consensus for these contradictory viewpoints. These events in our own American history prove not only the creative possibility of contradictory viewpoints enriching a consensus. They also prove that secular humanism must be regarded as a fourth of the four religious or cultural traditions. Furthermore, they reveal that the problem of consensus deals as frequently with the question of how to establish a tolerable harmony as with the question about the nature of the common good.

The problem of the strategies of establishing a tolerable harmony in the community deal, not with the nature of the common good, but with the question of the limits and the possibilities of men's virtues and benevolence and with the necessity of dealing with the residual self-regard of even the most virtuous man, by beguiling, suppressing or harnessing self-interest. On these questions, orthodox Protestantism seems to run the danger of being tempted by its pessimism to espouse political absolutism, while both sectarian Protestantism and the Enlightenment are always on the edge of utopianism, of either the fanatic or the sentimental variety. Catholicism, on the other hand, has a balanced view of the nature of political man, but is tempted to make a too absolute distinction between his "eternal" end and his "temporal" one, the one guarded by the Church and the other expressed in the political order. The most significant forms of political consensus in Western history, on the problem of the human stuff with which politics must deal, have undoubtedly embodied insights which have been drawn from all the religious and secular traditions. Radical Calvinism and the Enlightenment being the chief ingredients of the political philosophy which informed our founding fathers.

The religious pluralism of our nation, making necessary and being consequent upon, the constitutional grant of religious liberty, justified itself by prompting the various versions of Biblical faith to an enthusiastic loyalty to the nation and to the democratic state. We have previously defined this patriotic loyalty as the most minimal form of consensus for all types of community, whether traditional or democratic. The acceptance of the Catholic minority of a secular state, so much at variance with the Catholic traditions, seems to have been prompted by its preference for such a state instead of one which was based upon specifically religious but anti-Catholic premises. It was also encouraged by the great prosperity of the church in the American climate. This prosperity prompted two leading Catholic leaders of the last century, Archbishop Ireland of Minnesota and Cardinal Gibbons of Maryland, to espouse the principle of the separation of church and state from a Catholic viewpoint. This espousal was too heretical in terms of the Catholic dogma and was subsequently disavowed (In Ryan and Boland, "Catholic Principles of Politics"). The disavowal and the reaffirmation of the traditional dogma still

still generates anti-Catholicism among non-Catholics on the ground that the church is not loyal to the principles of our democracy. Some extreme Protestants and secularists also challenge the loyalty of the Church on the ground that it is beholden to a "Foreign Sovereign." But on the whole, no religious community is excluded from the consensus because of suspicion of its loyalty, either to the nation or to the principles of our democracy. It may be worth mentioning in passing that both the Episcopal and the Methodist church suffered from the onus of the suspicion of their loyalty during our war of Independence. The Church of England suffered for obvious reasons; and the Methodist church because of John Wesley's condemnation of the American revolution. Both communions rehabilitated themselves in brief time in the esteem of the nation; and the original tension, caused by the suspicion of alien loyalty was overcome by the establishment of independent ecclesiastical governments within the nation. Only the Catholic church, with its universal or at least supranational organization, is still subject to these suspicions. Perhaps this reveals no more than the jealousy of the modern nation about any loyalty which may seem to qualify loyalty to the national community. But the lack of consensus usually is expressed by the critics of Catholicism in terms of Catholicism's lack of loyalty, not to the nation, but to the principles of democracy.

B. The problem of consensus on the Political Level

The most obvious character of a democratic society is its willingness and ability to allow a free play of competition between political parties, expressing different and sometimes contradictory views of the nature of the community, the principles of justice which should apply in the organisation of the community, and the methods which should be used to arbitrate their conflicting claims. The question is whether the problem of consensus is relevant to the field of political controversy. The answer is that political freedom is not compatible with stability, if there is not a general confidence that such freedom is not a hazard to stability; and if there is not a consensus within the differences, which will prevent the party conflict from destroying the stability of the community. Confidence in the stability of the government which allows various parties to challenge any ad hoc solution of a problem of justice and permits as hazardous alternation of the authority of particular governments under the implicit consensus or confidence in this form of free government, is partly determined by the presence of at least a minimal consensus within the differences of the political parties. If the difference is too great, the party conflict will threaten the stability of the community. A comparison of the three great Western democracies in regard to the residual consensus under the political differences, will therefore be instructive.

Of these three democracies, the French democratic government has been most unstable, partly because the party differences were too great, and partly because none of the forms of government, including two empires, one constitutional monarchy and five Republics existed long enough to secure the authority and prestige which is derived from the implicit consent of the whole people. In all European democracies, three general political movements expressed themselves: the first was drawn from the old aristocratic tradition, based on landed wealth. The second was rooted in the interests of the rising business classes, and the third from the industrial workers. The peasant class of Europe played a varied role in the political struggles of European democracies. Sometimes they represented the conservative tradition, occupied by the landed aristocrats before the revolution. Sometimes they even supported fascist tendencies in opposition to the collectivism of the workers. The middle classes of rising business men expressed themselves politically in opposition to all confluence of political and economic power in traditional

mercantilism and ultimately in a consistent laissez faire doctrine of economic liberty. The working classes were from the beginning of the modern era to this day more collectivist and equalitarian.

In France, despite the violent elimination of the aristocratic force in politic the ideological differences between the parties were wider than in England. The conservatism of the peasants prevented the organisation of stable governments, envisaged by the radicals who conceived the constitution; and the abortive Paris Commune heralded and inspired the ideological rift between bourgeois and proletarian elements, which prevented stable government not only in France but in many of the Western nations.

The predominantly economic roots of political differences would seem to indicate the necessity of analysing the problem of consensus in the realm of economics and politics as a single realm. But the fact that there is a struggle in a free society, purely in the realm of economic power and interest, as well as in the realm of political power, makes it advisable to separate the two realms provisionally, and deal with the political struggle first, but with a full consciousness that economic interests are the most important motive forces in the political realm.

The French revolution gave the competing economic political interests a clearer ideological color than either the English or American revolution. The problem of consensus was therefore more difficult in France than in the other great democracies. In fact, the revolution made ideological distinctions so precise that the consensus of a common partriotism was easily obscured. Ideological differences, rooted in economic interests were aggravated by the unresolved conflict between clericalism and anti-clericalism, the consequence of a struggle, in which the traditional medieval society was challenged by a completely secular revolutionary movement, without the mediating influences of radical forms of religion as in Cromwellian England and the American colonies. The contradiction between clericalism and anti-clericalism was, in fact, so great that even the emergence of a radical Catholic party after the Second World War, the M.R.P., did not create a consensus left of center between Catholics and secularists. The educational issue prevented a consensus among the "progressive" or "liberal" parties.

It is interesting to note that the effort of the revolution to turn the absolute monarchy of the Bourbons into a constitutional monarchy under Louis XVII, failed despite the pathetic efforts of the king to submit to the revolution, largely because the emigre aristocracy, under the leadership of the King's brother, tainted the monarchial symbol with the taint of class treason, by calling on the monarchs and aristocrats to come to the imperilled king's aid. Thus Louis XVII's doom was sealed and the importance of the patriotic factor in a democratic consensus was revealed.

The importance of the factor of a common patriotic loyalty is even more clearly revealed by the failure of the various constitutions to solve the problem of order within diversity, by endowing the governments,designed to preserve order against party anarchy with such absolute power in the case of the two Bonapartist empires and even in the constitutional monarchy of Louis Phillipe, that in reaction the democratic movements constructed an unstable parliamentary democracy with no stable leadership at all. Only De Gaulle, in the recent past or present, has forced a tolerable solution of this problem of patriotism and democracy, by forcing the nation to accept the new constitution providing for a stronger executive power (significantly by the time-worn Bonapartist device of a yes or no plebiscite). Fortunately, he validated this choice of the nation, dangerous as it is, by combin-

ing dictatorial powers with democratic imagination, in saving the nation from a second peril of civil war on the unresolved issue of Algeria. Clearly DeGaulle, has revealed not only that a healthy democracy requires a minimal consensus within the parties at contest with each other, but also that a society, lacking this consensus can be saved from civil war, by a strong executive who can himself express a minimal consensus above the party conflict. If not, a democratic society is forced to choose between an enforced order or anarchy. It may be stated as an axiom of the political order that a community will choose the former, rather than the latter, so long as it has some freedom of choice, for the simple reason that order means existence and chaos is tantamount to non-existence. Perhaps the French situation proves that a minimal consensus makes a semi-dictatorial order a possibility that the absence of any consensus creates the possibility of unmitigated despotism (as in Germany in the Nazi era), and that a greater degree of consensus among the competitive political groups, makes democracy possible. Thus one must come to the conclusion that the degree of consensus establishes the degree of freedom which a community can afford. For, while freedom is a necessity of justice, it is obviously a luxury for communities who are at the edge of the abyss of chaos. For freedom represents a form of potential anarchyby the presence of various forces of mutuality and consensus within and above the competing social and political forces.

If the history of France, dramatically culminating in the present Gaullist democratic dictatorship, illustrates the possibility of preserving a minimal degree of freedom in a nation which enjoys only a minimal degree of consensus among the competing political forces, the other two western democracies with long traditions of free institutions. Britain and the USA illustrate the possibility of increasing the degree of democracy in a proportion to a more solid degree of consensus among the competitive political forces.

The solidity of the free institutions of Britain are perhaps more impressive than our own, not only because we have drawn many of our democratic resources from British history, but becasue the British democracy has been able to draw the traditional aristocratic tradition within the democratic consensus. In comparison, France violently destroyed this tradition, while we, growing great upon a virgin continent and our community was essentially middle class. The European landed aristocracy of the southern states was not powerful. Among our founding fathers Washington and Jefferson significantly represented this tradition, but Jefferson, in any case, was a convinced democrat, influenced by the Enlightenment. The aristocratic tradition was furthermore dependent upon the institution of slavery, and was liquidated by the civil war. Henceforth we were consistently middle class. Our conservatism, from the days of Alexander Hamilton, the real founder of the federalist party, represented the conservatism of the business interest. It lacked the sense of NOBLESSE OBLIGE of the European aristocracy, and was therefore more individualistic than European conservatism. But it also lacked the conservatism which was drawn from the feudal economic order and the monarchial political order. In Britain on the other hand, conservatism was drawn into the democratic consensus by a series of fortunate historical developments. The aristocracy had gained the specific recognition of certain rights from a reluctant king at Runnymede, and the "great Charter," thus became the basis for a constant assertion and extension of the rights of the nobles against the "royal prerogative." The effort of the Stuart kings, James I and Charles I, to assert the classical monarchial doctrine led to a counter assertion of the rights of the aristocracy. Thus even before the Cromwellian rebellion of the 17th century, Sir Edward Coke, in his Institutes, elaborated the thesis that the royal power was bound to recognise the rights of the nobles as long established "rights of Englishmen." This aristocratic democracy of the British parliament, consisting of "Lords and Commons" gradually broadened down and the common people achieved more and more rights, partly through the contest between king and nobles.

The whig aristocracy, which was the instrument of establishing a consensus between the aristocratic and the democratic tradition, was partly the fruit of the century-old tutelage in the responsibilities of government and opposition to the royal prerogative, created by this tradition, symbolized but not created by the great Charter. It was also partly the consequence of the decimation of the old aristocracy in the lethal "War of the Roses." This made for the recruitment of the business community into the old aristocracy. Thus Britain attained a social mobility within the feudal structure which no other European nation attained. Whig democracy combine with the aristocratic tradition was thus partly the fruit of this social mobility and partly the consequence of the older tradition of a responsible aristocracy, which shared with the monarch, the rule of the nation. The symbol of this joint rule was the maxim, "The King in Parliament."

The growth of industry in Britain in the 18th century and the early nineteenth century gradually transformed the whig party into the liberal party, as an organ of middle class commercial and industrial interests. The Cromwellian rebellion divided the gentry between the royalists and roundheads, though on the whole, Cromwell's parliament was supported by the "city," while the army composed of both Presbyterians and left wing Puritan sects, was to the left of parliament, as parliament was to the left of the royalists. The rebellion was a revelation of the breakdown of the consensus so necessary for stability in a free society. And the lack of a consensus in the revolutionary ranks made the Cromwellian dictatorship necessary as an instrument of order. But the fact that a restoration of the "old order" was possible, reveals that there was sufficient democratic leaven in the old aristocratic tradition, to prompt the nation to restore this peculiar blend of monarchism, aristocracy and democracy. This was done definitively in the constitution of 1688, which placed William and Mary on the throne by the action of parliament. Henceforth the power of the cron gradually eroded until it has become in this latter day but the symbol of the majesty of government, and of its continuity above the alternation of particular parliamentary governments, created and overthrown at the will of the sovereign people according to the democratic principles of John Locke. No better illustration in history can be found of the gradual growth of the democratic consensus, powerful enough to erode by gradual process, both the power of the monarchy and the political authority of the aristocracy. The liberalism which was the final fruit of Whiggery was resilient enough even to accomodate for a time, the political interests of the rising industrial classes, who, incidentally did not achieve full rights of suffrage until the Reform Bill of 1832. But the prestige and power of the monarchy was still so great, despite these developments, that our founding fathers could caste George III in the role of a despot, though their quarrel was obviously not with the King alone but with the king and parliament.

This is a sketchy and inadequate description of an historical process, which was able to draw aristocratic and commercial or middle class interests into a democratic consensus and was finally able to deflect the revolutionary impetus of the industrial classes into the same consensus. The Parliamentary Labor Party, composed of Trade Unionists and middle class idealists, developed in the early part of the century, and had sufficient strength at the end of the second world war to defeat the brilliant architect of the allied victory, Mr. Winston Churchill. The old semi-aristocratic tradition, on the other hand had sufficient strength to take over the Labor Party's program of a "welfare state," but discard the more dogmatic socialist program of the nationalization of industry. The consensus on the welfare state is, incidentally, not a unique British achievement. It represents a typical consensus of all western democracies, whether capitalist or socialist in theory. Its significance lies in the fact that all parties have recognized the moral and political responsibility of the community for minimal standards of security for all citizens.

Politically it represents the effect of the diffusion of political power through universal suffrage, upon the inequalities of economic power, created by the ever growing aggregrates of industrial enterprise in a technical civilization.

The gradual establishment of such a consensus, with sufficient resiliency to accomodate the interests and the growing power, first of the middle classes and then of the industrial workers, was made possible partly by empirical spirit, which dissolved the ideologies and dogmas of right and left. Partly the consensus is the fruit of a deep tradition which lifted the monarchial symbol above party strife and made it the symbol of the most persistent and necessary consensus in any society: the consensus of loyalty to the community, and to the state as a genuine instrument of the whole community.

In our own nation a viable consensus between the class of capitalists and the industrial workers was really more difficult for want of the oblique relation of the aristocratic tradition of NOBLESSE OBLIGE. The party struggle took place between the individualism of the middle classes and the collectivism of the workers. The social mobility of the American community, did however prevent the collectivism of the workers. The social mobility of the American community, did however prevent the collectivism of the workers from developing a consistent Marxist dogma, inspired by class resentments. It is significant that the "class struggle" only seriously challenges the democratic consensus when the inequalities of an industrial civilization are superimposed upon the class structure of a feudal sociaty, in which social snobbishness causes resentments which no sense of responsibility of an aristocracy, previously extolled, can overcome.

In our own nation the "factions" our founding fathers abhorred, grew into the Federalist and the Republican party as early as the second Washington Administration. It was a revelation of the divergent class interests of the Merchants, whose real leader was the aristocratic democrat, Thomas Jefferson. The American industrial workers have never developed a party of their own, though since the "New Deal" the democratic party is partially a vehicle of their interests. The party conflict from the early days of the Republic, despite acrimonious controversies between Federalists and "republicans" had an underlying "patriotic" consensus, the symbol of which was the equal devotion of Jefferson and Hamilton to the federal constitution. This consensus is a common heritage in the early days of the independence of an ex-colonial nation. The failure of the consensus to protect the unity of the nation was occasioned by the slavery issue which separated the southern agrarian interests from the western and northern agrarians, and drove the isolated slave-owners to the desperation of a rebellion. The victory of the north under a Republican president made Republicanism the dominant party of the nation for most of the 19th century. It expressed the interests of the growing class of capitalists plus the land-hungry farmers. Thus the Republican party untied the individualism of both the capitalists and the agrarian individualists. The presuppositions of these individualists were contradictory to those of the growing army of industrial workers, who were the victims of any dislocation on the increasingly intricate industrial complex of enterprises.

It is certainly significant that this contradiction between individualistic and collectivist theories and between libertarian and equalitarian conceptions did not create the rift, which occasioned in many parts of continental Europe, nor for that matter, the rift, signalized by the Civil War over the slavery issue. The question arises whether some underlying consensus under or over the differences guarded the unity of the nation. Perhaps the open conflict of the Civil War over the slavery issue was due to the fact that the disaffected minority of slave-owners was geo-

graphically localized in the southern states and that it had the ideological traditional support of the idea of the Rights of the states, made honorable by the fact that the Jeffersonian democrats had used it as an instrument of democracy agains the proto-Republicans, the Federalists. The loyalty of Robert E. Lee to the state of Virginia, though he hated slavery, amy be symbolic of the importance of this factor in breaking the consensus of the nation.

But these unique circumstances in regard to the slavery issue do not explain, why our industrial workers, suffering from injustices of early capitalism, as developed in America between the Civil War and theFirst World War, did not become as rebellious as many of their European brethern did, and why they did not even elaborat a mild form of revolutionary politics to express their resentments. What elements of consensus operated to persuade them that they "had nothing to loose but their chains?" One part of the answer to this question reveals a basic element in any democratic consensus: the confidence that the system of government will in the long run make for justice, even though in the short run a portion of the population feels itself defrauded. The social mobility of the nation, the opportunity of any member of the working class to move up in the economic and social hierarchy, the myth of the section hand becoming a railroad president, with its political counterpart of "from Log cabin to White House," expressed the confidence in a long-run justice through individual opportunity, which partly negated and obscured the collective class desperation, operative in less expanding economies and less open societies. This form of the confidence in a long-run justice, is an imperative part of any effective consensus.

The increasing political and economic power of the workers, and the gradual concessions of the manager class to the necessities of a collectivist economy, involving the corosion or rejection of the traditional ideology of economic liberalism, has contributed to an ever widening and deepening consensus in all western democracies, both parties have accepted the compromise of the welfare state and of a mixed economy, so that the points at issue become very narrow. Empirical tests and common experience have diluted the dogmas of each side. Furthermore each side recognizes the inevitable ideological bias of both sides so that modern democracies are even to incorporate the wisdom in their consensus, that contradictory emphasis are necessary about the nature of justice and about methods of achieving it, if true justice transcending ideological biases is to be achieved.

This brief survey of the effectiveness and necessity of a consensus in a free society, as it is displayed in the three great democracies of the west, reveals the importance of a consensus below the level of conscious political thinking and consist primarily of ethnic and linguistic homogeneity. We have neglected, for want of space, those types of free societies which have achieved stability without ethnic homogeneity. Switzerland and Canada are the primary examples of national stability despite such a consensus. The analysis if correct, also reveals the necessity of a minimal political consensus which traditional and free communities share and which consist of loyalty to the community on the one hand and confidence in the government on the other hand, as a legitimate mouthpiece of the community and as an effective instrument of order, since order is the primal desire of all communities, whether traditional or democratic. The reason that order is so important is that it expresses the community's survival impulse, chaos being tantamount to non-existence.

Democratic communities distinguish themselves from traditional communities in requiring justice as well as order from the government, though no one has adequately defined what the Aristotelian principle of justice in terms of "giving each man his

due" may mean in application to specific circumstances. It is precisely on this question that party contests are allowed in a democratic community, though the stability of the community is threatened if the definitions of justice by various parties is to contradictory, and if confidence is lacking that the government will serve justice in the long run, even though in the short run portions of the community may feel defrauded. We have, in addition, affirmed that a democratic community, which allows and must allow religious and cultural freedom, must enjoy a certain degree of consensus underneath the religio-cultural differences, if stability is not to be imperilled. If these various tests are met a democratic society is obviously more stable than a traditional society, in which some religious vitality or economic interest or political ideal is bound to be suppressed in the interest of peace and order.

It would be advisable to test this formulation of the problem in terms of comparison with the democratic nations, and the undemocratic nations of Europe and the budding nations of Asia and Africa. Of the undemocratic nations of the past, Russia and Germany offer the most interesting examples of the breakdown of traditional governments. Both were absolute monarchies, with quasi-constitutional parliaments "granted" by the monarch as a concession to the rising middle class but lacking real authority; in both the military power was allied with the monarchia power. Both governments broke down under the exertions of the first world war. The immediate cause of their collapse is a reminder that one must add to the source of prestige of a government not only efficiency but the ability to defend the nation against its foes. Order without justice breeds resentments; but resentments do not become vocal until obvious inefficiency and military defeat lower the prestige of the state.

In both cases a non-traditional government was formed, in Germany a democracy, and in Russia ACCOMMUNIST DICTATORSHIP. The Weimar Republic offers an instructive example of the failure of the democratic government to gain sufficient consensus to insure the stability of the community. The Republic was "ideally" democratic with proportionate voting etc. But the multiplicity of parties made for lack of stabilit in the government; and the failure of the government to assert its authority over the army, and its increasing dependence upon an undemocratic army for its stability further debased its prestige. Democracy was thus incapable of dealing with the sever consequences of the world depression and with the mood of desperation of a defeated nation. The parliamentary regime fell victim to the Nazi tyranny, which came to power by partially legitimate means through the conspiracies of a disloyal army, abetted by an army hero in his dotage, President Hindenburg. He was ironically elected to heal the breach between the traditional and the new regime. Consciously loyal to democracy but bound to military traditions, he proved to be the avenue through which a fanatically undemocratic movement could march through the bastions of a democracy (see Wheeler Bennett's "Nemesis of Power"). The final defeat of this fanatically nationalist movement in the Second World War is a matter of history and does not concern us here. In the context of this study the new Bonn democracy, arising from the ruins of this defeat, and achieving a more genuine health than the Weimar Republic is instructive. The complete collapse of the aristocratic-military tradition, eliminated one factor which prevented an adequate consensus in the Weimar republic. The economic health, contrasted with the economic crisis of the Weimar Republic, increased its prestige. But above all it wa unable to establish a consensus between the middle classes and the industrial worker through the contemporily almost universal mixed economy and welfare state norms. Thus Marxist rebellion was liquidated in the nation in which the Marxist rebellion was first conceived. This great stability upon a basis of broad consensus on economic problems, was achieved despite the fact that the nation suffered from a grievous division of its traditional unity, with one portion of the nation falling under the rule of the traditional Russian foe.

In Russia the breakdown of the traditional order led to a new form of undemocrat society under the dictatorship of one party, ostensibly serving as a surrogate for the messianic "proletarian" class of the Marxist apocalypse. It would be idle to speak of this dictatorship in the context of a study of a democratic society, if it were not for the fact that this totalitarian society reveals some promise of developing, not into a free society, but into a form of totalitarianism which is quite different from the Nazi despotism.

This development, which refutes our simple categories of "free" and "totalitaria governments is caused by three factors in the anatomy of soviet totalitarianism. The first is the growing technical competence of the new society, giving the government prestige and something like "implicit" consent for its rule, and putting it in a slightly different category of those governments which are ruled by the power of "force and fraud." There seems to be a wide consensus, derived from its obvious technical success. The second new factor is the educational revolution which offers the opportunity of educational advancement to all children according to their intellectual capacity. This revolution assures the consent of the younger generation to its rule and incidentally creates classes of technically competent citizens, who may not be immediately politically critical or competent, but which, in the long run, are bound to change the despotism into something quite different from the Tsarist despotism in a moribund society. The third factor is the remnant of democracy in the communist party itself, established by Lenin's principle of "democratic centralis It was destroyed by Stalinist despotism, but the fact that Krushchev triumphed in the rivalries among the post Stalin oligarchs by appealing successfully from the "Presidium" to the central committee of the party and that the Polish Gomulka was reestablished in power by the Polish central committee of the party, give the observer reason to speculate hopefully that the communist system is at about the same stage as the English democracy was at the beginning of the 18th century, when Sir Robert Walpole artfully managed the aristocratic oligarch which ruled Britain. Perhaps it is not too hazardous to mention a fourth factor making for a more democrat consensus. That consists in the agreement of the various oligarchies of Russia, political, military and managerial that they will not again be ruled by terror. Even the rivalries between these various oligarchies may contribute to a more "open" socie

The present Communist boss, Krushchev, has gained his precarious eminence, on the one hand by exploiting the prestige and the fears of the supreme political oligarchy, the communist party leadership. This does not offer much hope for the development of an "open" society. But on the other hand he has gained his eminency by an artful exploitation of the consensus between these various oligarchies. This is a rather ironic reversal of the original Marxist dream of a perfect democracy, but it does suggest the embryo of a democratic consensus. Only an artful politician, suc as Krushchev, can operate in this field of politics, and not a terrorist like Stalin. Thus there is more than one reason for regarding the Soviet system, not as a democracy in the making but as something different from the despotism of either Hitler or Stalin. The important issue is always whether differences of viewpoint are forcefully suppressed or whether a consensus is found between them which will offer the basis of stability without suppression.

The chances of democratic consensus in the new nations

The stable national communities of the West, have, as we have noted, linguistic and ethnic factors of cohesion below the level of conscious political life; and they have been able to become successful democracies only, inasfar as their religiocultural differences exhibit an underlying consensus, and their economic and politica life is characterized by a competition of interest and conflict of parties can take

place under the presupposition of a consensus of patriotic loyalty and confidence in the system of free government. This consensus prevents free societies from falling into anarchy. The degree of required consensus can not be exactly defined because it varies with time and place and the relative strength and weakness of the consensus on the various levels of the community's life.

Modern national communities, emerging in Asia and Africa, universally desire bot national independence and technical competence, but it may be questioned whether they have sufficient consensus, both below and upon the level of conscious political thought, to make the western pattern of democracy compatible with their stability. It will be remembered that the first western nation, particularly England and France, used royal power, rather than democratic institutions, as the instruments of integral nationality. The business classes, which initially supported the royal power against the nobles for the sake of creating a larger and economically more viable integral community, finally destroyed the royal power and became the initiators of democratic governments. The question now is, whether the high degree of literacy, required to sustain a democratic consensus, is immediately available to the new natic

The most effective instrument of community, in the contest between the new nations and the old sovereignties of church and empire, the printed word was most potent, if only because it helped to create a single language, which triumphed over the various dialects. This linguistic consensus is a minimal requirement of any free society, together with the literacy, which makes a linguistic consensus effectiv Of the new nations, even the comparatively healthy democracy of India, must avail itself of the common language of its former master, as an instrument of cohesion. The emerging nations of Africa are generally defective in the linguistic basis of national life. Both primitive tribalism and dialect confusion represent hazards to their stability. Primitive tribalism challenges the patriotic consensus of the new nations, much as state loyalty in the new American nation, was a threat to the Federal union. Among the new nations, such nations as Indonesia are defective in both geographic, ethnic and linguistic bases of communal consensus. The new nation of Ghana, despite its rather impressive parliamentary traditions, bids fair to become a "one party" state, because the necessity of overcoming tribal loyalties (of the powerful Ashanti tribe in particular) makes the achievement of consensus in terms set by the party system of more stable democracies, beyond the reach of the new nation.

The new nations may be as defective in establishing a consensus within the level of conscious politics as below the level of conscious political life. We have noted that the original ideological differences between the parties of western democracies have gradually narrowed, so that the consensus between the parties has become more significant than the residual differences. But this consensus has been reached, because the economic differences between the parties have been mitigated, partly by allowing the industrial workers organized power in the economic realm and partly by political strategies, designed to level down the sharp inequaliti of economic life, due to the centralized power of the industrial establishment.

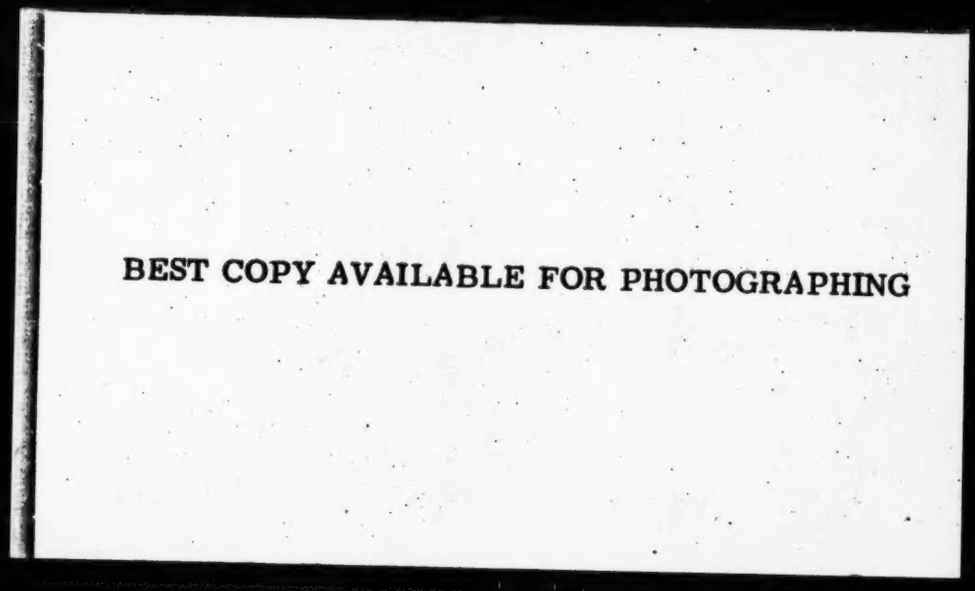
Western democracies, in short, have greater agreement on problems of justice, because they actually have achieved more justice. But this development has been due to the greater technical and political competence of the traditional "lower class They have become increasingly the beneficiaries of universal standards of education. In the new nations, some of which are wanting in minimal standards of literacy the technical and political competence of the peasants and workers is not sufficient to force the achievements of higher standards of justice. Consequently a broad consensu on these standards is also wanting. The delicate equilibria of power, which are the prequisites of equal justice, are beyond the reach of nations, which have only recently achieved a stable democratic life. The necessary consensus for the

achievement of a stable democracy was lacking, both because of the political incompetence of the "masses" and the failure to achieve a viable economic justice in a social situation in which the shrewd were tempted to take advantage of the simple.

One must draw the obvious conclusion, that it is a grave error to regard the western style of democracy as a kind of universal norm which all nations want and are capable of achieving, if they are not bedeviled by the communist virus. The developing nations of the two continents of Asia and Africa need not fall under the communist yoke. But we ought to be more conscious than we have been, that democracy and "free elections" are not the simple relevant norms for all nations in every stage of economic and cultural development. Many of the non-communist nations, are not in fact democracies. Some of them are governed by military dictatorships, others have more traditional non-democratic governments; and some, which are currentl democratic, may not survive as democracies. Their want of the various types of consensus may be below the level of conscious political life or it may express itself within the economic and political sphere. But in any case their varying ill fortunes validate the conclusion that without an adequate consensus on more than one level of communal life, democracy cannot be compatible with communal stability. Tyranny need not be the only alternative to anarchy. But a democracy without an adequate consensus, may be perilously close to the abyss of anarchy. It may be taken as axiomatic, that a community threatened with anarchy will resort to despotism in a final desperate expression of its survival impulse. If this be true, a free society flourishes not only through the passion of its members for liberty, but because two forms of consensus have made freedom compatible with stability and justic One form of consensus, that below the level of conscious political life, cannot be contrived. It is a necessary "given" in an historic situation. It consists of ethnic and linguistic homogeneities.

A second form of consensus in the religio-cultural life of the nation cannot be contrived. If it is completely absent a free society cannot be formed. Nevertheless if there is a modicum of consensus in the religious sphere an atmosphere of uncoerced culture can enhance the consensus; and at any rate prompt all sects to an equal loyalty toward a religiously neutral state.

The third form of consensus on the level of conscious political life, is partly the fruit of freedom, in the sense that a free society will ultimately create the standards of justice on which a consensus can develop. But some astute political contrivance must prepare for such a consensus; for the justice on which the consensus centers is partly the product of a tolerable equilibrium of social and economic power. Without such an equilibrium a technical society will aggravate, rather than mitigate, the injustices, derived from the impingement of strength upon weakness in traditional cultures. For this reason it is foolish to regard democracy as it has developed in western culture, as the ideal norm and form for communities all over the world.


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REORGANIZING THE PRESIDENCY IN 1961:

A Preview of the Issues

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler-Hilton Hotel, September 8-10, 1960

REORGANIZING THE PRESIDENCY IN 1961:

A PREVIEW OF THE ISSUES

Since the "Institutionalized Presidency" first became a feature of our government in 1939, each new Administration has begun with projects of "reform," with efforts to improve upon the presidential organization and procedures it inherited. In 1945, after Harry S. Truman's succession, dissatisfaction with inherited machinery ranged all the way from Truman's own distaste for prior "secretiveness" and "sloppiness," to Forrestal's desire for a "Minister of Defense," to OWMR's abortive plans for "filling the policy gap," to Budget's claims upon the role of Economic Adviser. Ensuing statutory innovations -- CEA, NSC, NSRB (now OCDM) -- were not White House creations, but they certainly were nurtured by the new regime's reformism. In 1952, Dwight D. Eisenhower made a campaign issue of disorder at the top of the Executive establishment. New methods for the White House, and for NSC, more staffs, committees, paper-flows, a cabinet secretariat, and Sherman Adams followed in due course.

In 1961 all present signs suggest that we shall see a new wave of reformism -- certainly in talk, probably in action -- with respect to organization at the presidential level. Whether Kennedy or Nixon wins in November, the new President will be a man of very different temperament than Eisenhower, and inclined, no doubt, to demonstrate the differences by changes in the Presidency's routines and procedures. The new men near the President will be no less inclined than were their predecessors eight and fifteen years ago to feel they can "do better" than the tired men before them. Moreover, they will find ready-at-hand in Senate testimony, plenty of encouragement for altering past methods. Judging from its hearings and staff studies up to now, the Jackson Subcommittee on National Policy Machinery should produce the most sophisticated criticism and proposals since the Brownlow Report a quarter-century ago. At least it will produce the raw materials for a critique, and thereby feed the urge to innovate. Besides, the new Administration will feel pressure from such diverse groups as scientists, "urbanists," and bankers for new mechanisms of coordination "at the highest level." The pressure is already being generated. "An NSC in every sphere" bids fair to be the cry next year, especially from those who know the least of NSC.

Finally, there is the circumstance that most distinguishes the forthcoming reform-wave from preceding ones: this time, the outgoing Administration is itself to be the source of sweeping plans for a reorganization of the Presidency. Whatever Senators suggest, whatever interest groups may urge, whatever the new President proposes, Eisenhower has already indicated to the press that he will join the ranks of the reorganizers and give Congress his own version of reform when it assembles on the third of January.

If the President persists in this intention, his proposals will be public property before his successor takes office. Given his popularity and the disinterestedness he then can claim, an "Eisenhower plan" might well become the ground on which the issues are posed, argued, and decided in the next wave of reorganization.

From what is known at present, this would be an unfortunate eventuality. In outline, Eisenhower's planned reorganization is already public property. It was put before the Jackson Subcommittee last July by the former chairman of the President's Advisory Committee on Government Organization, Nelson Rockefeller. The Rockefeller presentation may have been a trial balloon, but as of now I am informed that it describes what Eisenhower means to offer as his legacy next January. Yet Rockefeller's outline can be characterized, at best, as a scheme to make the Presidency manageable for an Eisenhower. By the same token it obscures, where it does not distort, the real needs of a Nixon or a Kennedy. The Governor of New York may aspire to be President, but his planning for the Presidency scarcely shows it. If the issues of the institutionalized Presidency were to be decided in Rockefeller's terms, the next reorganization would be notable above all others for the intellectual confusions that it brought to public life, and for the institutional entanglements in which it put a President. The White House, one hopes, will have some second thoughts before next January.

But the Rockefeller plan has one great virtue (a virtue, at least, for this panel's purposes): it tries to deal in one fell swoop with <u>all</u> the major problems of the institutionalized Presidency; its terms encompass most of the persistent issues that have plagued the Presidency as an organization since the Second World War. Discussion of main features in this plan is thus a most convenient way to get at the main issues that need facing as we near another period of organizational reform.

The purpose of this paper is to raise those issues. Assuming that the White House still shares Rockefeller's views, the indicated method seems, not only convenient, but also timely.

II

The Rockefeller plan can be described, superficially, as an effort to secure and stabilize, in institutional form, the roles of Foster Dulles and Sherman Adams during the first years of Eisenhower's second term. Or, as another way of putting it, this is an effort to obtain the alleged advantages of Herbert Hoover's proposed two appointive Vice-Presidents without the disadvantages attendant on that title. Rockefeller's duo would be, respectively, "First Secretary of the Government," and "Executive Assistant to the President and Director of the Office of Executive Management"; the one would be presidential chief assistant on the "foreign side," the other on the "domestic side." Let me deal with these two officers in turn. In so doing, let me note that my acquaintance with the Rockefeller scheme rests mainly on his presentation to the Jackson Subcommittee (see Rockefeller press release of July 1, 1960, and Subcommittee release of July 11). No doubt there are refinements, modifications, perhaps caveats, which he did not inject into that presentation.

Rockefeller's First Secretary of the Government -- a title Eisenhower put in circulation at press conference several years ago -- would be, ostensibly, a presidential deputy "above the cabinet" lacking statutory powers or operating duties of his own, but exercising presidential authority, by delegation, "in all the area of national security and international affairs." Actually, however, as Rockefeller describes him the First Secretary would be both more and less than this: more in the sense of Senate confirmation, of authority "to act for the President . . . . at the Prime Ministerial level," of statutory designation as "Executive Chairman of NSC" (the President, presumably, becoming "Honorary Chairman"), and of statutory status as appointing officer for heads of related committees; less in the sense that Cabinet officers and JCS would keep their present statutory mandates and their present legal status vis-a-vis the President.

Here is a model for trouble. This man is made too visible to function anonymously as a Harry Hopkins. He is made too accountable to function privately, immune from Congress, as a Sherman Adams. Yet without anonymity or privacy he is to poach upon the statutory preserves of department heads (and chiefs of staff) asserting constitutional authority by delegation. And this he is to do not by himself, as one man acting intimately for the President, but at the head (thus also at the service) of a quantity of staffs: the personnel of NSC and OCB, "a staff of his own," and "all of the interdepartmental planning machinery . . . . in the area of national security and foreign affairs."

Historically, the closest parallel for this First Secretaryship is the "Assistant President" role played by former Justice Byrnes as Director of War Mobilization under Roosevelt in 1943-44. But there are significant differences: Byrnes had no statutory powers, much less recognition (and he sensibly resigned soon after Congress forced them on him). Roosevelt, on the other hand, could claim most of the statutory powers being exercised by agencies within Byrnes' sphere. The "departments" in this case derived authority, for the most part, by delegation from the President; the statutes ran to him. And Byrnes worked with a staff of about six; reportedly he thought it large. Byrnes' job was improvised by Roosevelt, he accepted it from Roosevelt, and he left it after Congress had diluted their relationship by putting it in statutory form.

These differences are suggestive. OWM, as a "staff" office with directive power, has been our nearest approach, until now, to a formal deputyship in the Presidency. If the First Secretary is conceived as such a deputy, his own terms and conditions of employment almost guarantee that he could not sustain the role. A man in his position would be almost sure to fall between stools, too encumbered by his title, statutes, staffs, to be a really intimate (which means dependent) aide, yet too removed from any departmental base to fight for long, on advantageous terms, with Treasury, the Pentagon, or even perhaps State.

A tendency to fall between these stools has been observable in a succession of staff officers during this past decade: Harriman in 1950-51, Rockefeller himself in 1955-56, Stassen in 1956-57, these among others. In each case, presidential backing once was strong, but presidential interest or availability diminished while the officer concerned had too much staff -- and too much business brought by staff -- too many fingers in ongoing, interagency machinery, too many fights unfinished, to remain an intimate by shifting gears, like Harry Hopkins, or, again like Hopkins, to withdraw into passivity and wait. Yet intimacy with "the boss" was the sole link of these officers to power; lacking the autonomy and fixed entrenchments of department heads, their power waned as the link weakened. Harriman moved to a statutory post; Rockefeller and Stassen retired to private life.

This is not to suggest that a First Secretary of the Government could fall as low as a mere Special Assistant to the President. But he could fall in the same direction, for the same reasons, and he would fall from higher. The outward look of his decline might be quite different, but the causation could be much the same. A "deputy" holds power as a function of his intimacy; titles, statutes, staffs, and ongoing committee work, are enemies of intimacy; they also are poor substitutes for departmental bulwarks. Byrnes, a politician to his fingertips, understood this very well; so did Harry Hopkins; one suspects that Sherman Adams grasped it, too; Rockefeller, seemingly, does not.

A First Secretary would have two escape routes from these built-in dangers to his deputyship: he could raise himself toward a position as Prime Minister, in fact, if the President consistently deferred to him, or he could reduce State to the status of "his" agency, his "troops," if the Secretary were sufficiently pliable. (A Stettinius, for instance, might do nicely.) Judicious use of both these routes at once is clearly the best formula; effective use of each would make it easier to use the other. Such a combination is apparently envisaged by the Rockefeller plan.

But what will cause the President and Secretary of State to play their necessary parts? Perhaps an Eisenhower might consistently defer to a Dulles. But can anyone imagine a Nixon or a Kennedy consistently deferring to anybody? If they were inclined to try, can anyone imagine that they would escape a ruckus on the Hill? Eisenhower as a hero is a special case, but if a politician in the

Presidency failed to say "I am first secretary of the government," Congress (and the press) would say it for him. As for the Secretary of State, Rockefeller's comment is suggestive:

> I talked about this position /of First Secretary/ to Secretary /of State/ Dulles. . . . . He was completely for this. He visualized himself in that position.

But would a Dulles play patsy for a Dulles? Even a Stettinius, however ready to assume that role vis-a-vis the President, might balk at doing so for an official in between.

It is easy to poke fun at the First Secretaryship, but it is necessary also to acknowledge that in making this proposal, Rockefeller has addressed himself to two besetting problems in the operation of the Presidency. One may dismiss his solution; one cannot dismiss these problems. They constitute two of the most important issues now confronting organizational reformers.

First is the chronic inability of interagency machinery to live up to expectations in the "formulation" and "coordination" of "policy." Rockefeller's answer is a man, authoritative and prestigeful, to ride herd on NSC, and OCB, and all the rest, and whip them into meeting expectations. This ignores the fact that such a man is on the scene already in the person of the President, and that there is no warrant in experience to think a deputy could do what he cannot. Indeed, experience suggests that what is wrong is not the manpower but rather the expectations; this machinery has been asked to do what it is generally incapable of doing: to develop bold, farsighted ideas and then turn them into prompt, effective action. Making plans and taking action, though, are tasks for men within, not in-between, departments. Interagency committees are, in essence, legislative forums: they can publicize, inform, debate, review, adjust, authenticate; but on the record of the past they cannot initiate, or operate, save at the lowest common denominators of agreement. It probably is futile to expect more of them, yet our government is full of men who do. In approaching this issue, one supposes that the first step might be not a new official but a change of expectations.

Second is the uncomfortable duality in the position of the Secretary of State, at once a "staff" adviser -- by tradition, first adviser -- to the constitutionally responsible President, and simultaneously head of a department with operating duties far narrower than the frame of reference in which the President needs advice. The Secretary is by law chief diplomatic officer, chief foreign aid administrator, chief foreign information officer. Are these duties broad enough and do they leave him free enough to be, also, the President's first policy adviser at a time when "foreign relations" means "national security" (and "national economy")? Can he transcend State's "parochialisms"? Can he escape the drag of Foreign Service mediocrity? Can he stay home enough? And can he, as the Cabinet officer whose departmental status yields him least

political or clientele support, consistently maintain his first-adviser's standing when the problems equally concern Defense, or Treasury, or Agriculture, or the Budget?

These are hard questions, not susceptible of final "answers." One cannot even make a short-term judgment independent of the times and personalities involved. Roosevelt's judgment fifteen years ago was clearly "no" on every score, and when Hull left the State Department Roosevelt evidently planned to be in form what he had often been in fact, his own chief policy adviser. Eisenhower's judgment, currently, is also "no," if one can take the Rockefeller plan to represent him, and Dulles, it appears, judged similarly. But this Administration has no taste for FDR's solution and it is unlikely that most Presidents would welcome it, at least in their first years. The alternative is Rockefeller's First Secretary, who would take over from the Secretary of State all claims upon the role of first adviser. The Secretary of State, freed from his "staff" role, could settle down to supervising departmental business and could go abroad as often as his foreign colleagues liked.

Faced by this alternative, however, it is hard to see why one should not judge all those questions "yes" and try at least once more -- perhaps as a "last try" -- to make the Secretaryship of State an adequate place for a pre-eminent adviser. Comparatively speaking, State seems rather less unpromising than Rockefeller's new creation as the base for such a man. If one seeks prestigeful titles, the historic terms are better than a grandiose new phrase. If one seeks a departmental power base, the State Department, although no great shakes, is infinitely preferable to nothing. If one thinks the Foreign Service cannot adequately staff the Secretary-as-adviser, why not recreate the Departmental Service, borrow from Defense, tap the universities? If one fears to have the Secretary overseas too much, why not experiment with a subordinate as traveller, give him the new, unprecedented title (easier invented for negotiators than for Cabinet members), and put overseas objections to the test of patient explanations? To try to meet the issues of State's dual role by keeping both in State sounds unadventurous. Perhaps it is, though it would mean a revolution inside State. But Rockefeller's remedy seems far too dubious to use while other measures still remain to try.

Organizational decisions are, of course, political decisions; they have to do with power; they confer advantages on somebody's perspectives at the relative expense of someone else's. To argue for another try with State is to argue for advantaging perspectives represented in the core of that department: the diplomat's perspectives (using "diplomat" broadly), not the warrior's, or lawyer's, or the publicist's, or the economist's. In principle, I see no reason to demur at this result. A comprehension of diplomacy as politics, of foreign relations as a game without end, ought to be stressed in the advice of a pre-eminent adviser. In practise, to be sure, the "diplomat's" perspectives may be poorly represented inside State. But we are more likely to find them there -- or to be able to instill them there -- than anywhere else in government. In

practise, also, there may be some danger that the first adviser could become entirely too preeminent, able to distort or smother relevant perspectives other than the ones of his advisers. But this is the very danger that a presidential staff, adroitly used, is best suited to guard against. A President does not need "deputies" to save him from "parochialism," he needs spies, gumshoe-artists, needlers. He needs them and he need know how to use them. If he does so, this danger grows remote. (It grows still more remote if he proceeds, besides, to place competitive personalities in State's great institutional competitors, Defense and Treasury.)

To take issue with Rockefeller's First Secretary is not to urge that there should be no presidential staff work on the "foreign side."

III

Rockefeller's "Executive Assistant to the President and Director of the Office of Executive Management," is envisaged, apparently, as a sort of Sherman Adams and Harold Smith rolled into one, a combined "chief of staff" and strong Budget Director. Rockefeller has not testified at any length upon the point and it is possible that these terms overstate his case. But inside the Executive Office plans of the same sort have long been termed "a substitute for Sherman Adams." Presumably, the Adams-Smith analogy is fairly close as an expression of intent. It also serves, admirably, to suggest how far from the intention would be probable results.

This presidential deputy on the "domestic side" would wear two hats, both indicated in his title. As Executive Assistant to the President he is, presumably, to be if not quite "chief of staff" than at the least distinctly primus inter pares among White House aides (save for the First Secretary and his staff). Rockefeller uses the analogy of Secretary to the Governor in his Albany office. At the same time, as Director of the Office of Executive Management, this domestic deputy would supervise five subordinate bureaus, each headed by a presidential appointee. Three of these bureaus correspond to, and presumably would be enlargements of, the Estimates, Legislative Reference, and Administrative Management Offices inside the present Budget Bureau (the first of these would keep the Budget title). The fourth is a new label for that hapless function still in search of a good home, the old Liaison Office for Personnel Management. The fifth is ambiguously titled "Bureau of Program and Planning"; in immediate terms this evidently is to be a dumping ground for some oddly-assorted surveys and planning projects that got started at the White House under Eisenhower; in long-range terms one may see, if one chooses, the ghost of NRPB, or of Harold Smith's Fiscal Division, or a competitor for CEA, or a place for parts of OCDM, or a means of soothing "urbanists" and others when they press for the same status as economists and scientists. Rockefeller has not specified which or how many of these roles he now foresees for this new "planning" bureau.

If the First Secretary's intimacy with the President is compromised by staff entanglements, those are as nothing to the strains placed on this second

deputy's position by virtue of his two hats. Directorship of all of these "institutional" staffs -- staffs to the Presidency, not the President -- with their careerist experts and their technical concerns, would hamper his performance as an alter-ego. Meanwhile, his Executive Assistantship would compromise his status as an institutional adviser. The Sherman Adams who was also Budget Director would be an incredible bottleneck, worse even than the real-life Adams; he would be too burdened -- and would have too much autonomy -- to be a trustworthy extension of the President-in-person. Meanwhile, the Budget Director who was also Sherman Adams would be far less able than a Harold Smith to deal with agencies and Congress as an agent whom the President could overrule or use as whipping boy. And he would be hard put to deal with White House colleagues or "the boss" in Smith's guise as a sympathetic but detached exponent of considerations other than "political." A President may need an alter-ego; he certainly needs intimate personal agents; he also needs agents-at-one-remove. He needs advice in personal terms; he also needs it in institutional terms. A President needs all these things at once. To seek them from the same man is to ask for poor performance of them all. This invitation is inherent in the Rockefeller plan.

Even if the job were split and those hats placed on separate heads, Rockefeller's plan remains a dubious prescription. For the White House post would still seem to resemble Sherman Adams's original; the problems in that pattern hardly need recounting here. And the Director of Executive Management, standing alone, would seem to be worse off than even a contemporary Budget Director. Fragmentary personnel and planning tasks are probably a source of weakness, not of strength, adding far more irritants than bargaining advantages to a Director's dealings with administrators and with Congressmen.

Perhaps it distorts Rockefeller's scheme to treat his proposed OEM as though it were to function as an entity. Perhaps this proposed "office" is to be, like the old OEM, merely a formal statutory framework; perhaps the title of "director" merely indicates the White House aide with whom its bureau chiefs should chat before they see the President. If so, the Budget Director would be less advantaged still, removed from the last vestiges of duties and perspectives broader than his budgeting. We would then have come full circle from the Nineteen-Thirties and the Budget would be back where the Brownlow Committee found it.

As an effective instrument for general-purpose staff work, the Budget Bureau has been in uneven but continuous decline since the Employment Act frustrated Harold Smith's endeavor to improve upon the Brownlow terms of reference by enlarging Bureau duties and perspectives to the breadth of "the Nation's economic budget." Smith had hoped (and had begun) to build around the work now done by CEA a program-oriented staff, thus gaining for his Bureau substantive perspectives as strong and well entrenched as the older perspectives of "economy" and "management." With these three clashing in the course of budget making, and of legislative clearance, and of readying what is now called the Economic Report, the Budget Director, master of them all, would have had extraordinary opportunity and flexibility as chief, in effect, of a general-utility, institutional staff. So, at least, Smith evidently hoped. But in 1946, CEA was

created as a source of staff assistance on the Economic Report; strong substantive perspectives were not long sustained within the Budget Bureau. Since 1953, and most dramatically since 1957, White House pressure for economy has held the Budget to its most traditional perspectives, virtually excluding others. Now, if OEM is taken as a fiction, Rockefeller's plan would freeze that outcome; legislative clearance would be removed to another place, so would the Budget's claim on "management" perspectives. Nothing would be left but budget preparation and perspectives of "economy." As for Smith's implicit "chief of institutional general staff," if OEM is fictional, both chief and staff are broken into bits. If OEM is taken as an entity, his scheme has been aborted.

Conceivably the time has come to give up on the Budget Bureau. Quite possibly we ought to come full circle and start fresh. Rockefeller certainly can be defended for proposing that. The trouble is that his fresh start turns out to be a false step. In attempting to combine an Adams with a Smith, he weakens the one and destroys the other's power base.

The fate of Budget Directors and of White House deputies is not, however, the worst feature of this curious combination. That honor is reserved for its openly-declared "domestic" orientation. This ratifies the practise of the Adams-Dulles years, a practise which has roots in previous Administrations, but it is no less dangerous for being "customary." To put White House staff leadership, "executive management," and budget-making in a category separate from the most important sphere of governmental policy was justified, perhaps during old-style emergencies of Roosevelt's sort, when the importance of that sphere could be considered transient. But in perpetual "emergency," under the conditions of cold war, to treat those functions as a thing apart from "national security and international affairs" is to perform a great disservice for the President. Truman, in the main, was served so; Eisenhower also. One wishes better luck to the next President. The wish would be in vain, though, under Rockefeller's scheme.

This is not to suggest that most of the hourly choices which a President must face and on which he needs staff work, day by day, are other than "domestic" in their momentary setting. Neither is it suggested that a President can do without assorted aides whose duties are "domestic" in immediate terms. What I do suggest is but a truism; most "domestic" undertakings at his level automatically have "foreign" implications or effects -- and vice versa.

It follows from this truism, however, that if he were served effectively, a President's "domestic" aides and "foreign" aides would share each other's competences, interests, information, not only at the level of the "deputies" atop two staffs, but at all levels of essentially one staff. It follows, further, that the budget process of a President well served would be directed, organized, and staffed in keeping with its status as a major means of making national security policy. But how could any of this follow from the Rockefeller plan? The whole thrust of that plan, its distribution of duties, its choice of titles, its terms of reference, even Rockefeller's rhetoric, is in the opposite direction.

As in the case of the First Secretary, it is easy to find fault with Rockefeller's scheme for a domestic deputy. But just as in the earlier case, one must acknowledge that here, too, he deals with cardinal issues for the next wave of reorganization. Two of those issues have already been identified. A third, fourth, fifth emerge from this domestic plan.

Third is the accumulation, in the White House, of assorted special-purpose staffs and functions not immediately necessary to the work of the President himself. One result can be deduced from Parkinson's law: The White House is as busy as when it was smaller. Another result can be deduced from Gresham's law: "This is the White House calling" does not mean what it once did. Still another result can be deduced from the location of complaints against the White House. "Bottlenecking," "second-guessing," "Layering" were once the expletives of outlying departments; one hears them now in the Executive Office, just across the street.

Rockefeller deals with this condition by re-labelling; some staffs and functions would be moved out of the White House to OEM's bureaus of planning and personnel; others would be subsumed under the First Secretary. There is nothing wrong with pushing jobs and men out of that House, though which should go where remain arguable questions. But this is a palliative, not a cure. The cause of the condition is not reached by an occasional housecleaning. The White House has grown swollen in reaction to defaults by the departments. The victims of "layering" have often been its instigators. Rockefeller told the Jackson Subcommittee:

> ". . .as Under Secretary of Health, Education and Welfare when Mrs. Hobby was Secretary, we would come on the question of policy of federal aid to education and these important problems. We wanted to sit down and talk with somebody in the White House as to what national policy was on this. There was not anybody there who was responsible for that . . . ."

One might have thought the Secretary was responsible, with the proviso that the President could pull the rug from under her. Instead, the thought apparently is "push responsibility up and take no pratfalls." And this has been the thought, it seems, not only from below but from above in recent years. One cannot cure what ails the White House while the President shares that thought.

Fourth is the widening gap in presidential staff resources left by the Budget Bureau's failure to live up to the high hopes of two decades ago. For fifteen years the Bureau has been suffering a cumulative drain of talent, energy, elan. For six years, since Joseph Dodge departed, it has also suffered from a quaint White House conception of its functions, symbolized by CPA's in the Directorship. (With at least two of Eisenhower's Budget Directors, limits of personality compounded damage done by limits of profession and experience.) And for three years the Bureau has been suffering, besides, from the strain of conducting economy drives too strong for the stomach even of its own

professional staff. The "modern Republican" budget of 1957, which Humphrey attacked and Eisenhower abandoned, marks the peak of staff initiative in this Administration.

Rockefeller's plan accepts the consequences and would leave the Bureau in the reduced state to which Eisenhower's practice has brought it. In effect, the treatment is the same as that prescribed for State. But just as in the case of State, Rockefeller's new creations are so dubious that caution counsels a "last try" to work with what we have. A Budget Director who was neither an accountant nor a "managerialist," but oriented, rather, toward the cardinal policy concerns of modern government would be the first, essential step in such a try. The building of strong, substantive perspectives in his staff would be a second step. To indicate these steps is to suggest the difficulties in the way of taking them. The Bureau's title, reputation, recent record may make them unappealing to a President, or unacceptable to agencies, or unwelcome in Congress. The Bureau's current staffing, methods, paper-work may be beyond redemption by an effort from within. But in advance these difficulties seem less formidable than the uncertainties of a "fresh start," even if that start were well conceived, which Rockefeller's is not. The Budget's long decline may prove incurable; before accepting that conclusion, though, a cure ought to be tried.

Fifth is the progressive failure of the Institutionalized Presidency to make the most of action-forcing processes as vehicles for policy coordination. This issue underlies the last; this is what makes the Budget Bureau's weaknesses significant (and lends significance, also, to weakness in an agency like CEA). By "action-forcing" processes I mean recurrent circumstances or procedures that assure a flow of concrete issues to the President for definite decision by a certain date. In times of hot war, action on the battlefield is such a process; in times of economic crisis, shutdowns of production could have comparable effect. In times of cold war and of relative prosperity, the nearest counterparts are presidential messages to Congress. Diplomatic and domestic crises, nowadays, force issues up sporadically, intermittently. But annual and attendant special messages, Administration drafts of major bills, mid-session exhortations, late-session critiques, all these recur with regularity. (So, for that matter, does the presidential press conference, a lesser but important action-forcing process.) And these, since they involve Executive relations with another Branch, not only force decisions toward a President but through him; unlike matters in the hands of the departments these messages cannot be sent without his personal participation.

If one seeks to coordinate policy, and to center that coordination in the President, such action-forcing processes become important means. They get the President into the act and give the agencies a stake in being there as well. They increase White House leverage and agency incentives for decisive consultations about something in particular. And they deal with "policy" in its most meaningful sense, the sense of concrete, publicized intentions.

But the importance of these means is scarcely recognized in current presidential organization; it seems to be unrecognized, for instance, in the Rockefeller formulation. Instead, one sees the Presidency's problems posed in terms of serried ranks of staff coordinators and committees without reference to the things a President must do, and can have opportunity to do, from day to day. Yet institutional machinery, at his level, not directly tied to action-forcing processes is more likely to bog him down than help him in his business. And coordinative effort by his office not directly tied to a fixed obligation on his part is more likely to bring frustration than decision in his terms.

The key problem of presidential organization is not "organization," per se, but the "how" and "when" of introducing relevant perspectives into action-forcing processes. If one wants to advantage the perspectives of Defense and State, one gives the NSC a real role at the target-setting stage of budget season. The problem also becomes how and when to spread the reach of those decisive processes. If one wants to improve the chances for coordinated economic management, one starts by adding specificity and shortening intervals in presidential obligations under the Employment Act.

As we approach another period of organizational reform, one hopes that the reorganizers will address themselves to an imaginative use of processes, and not waste ingenuity on irrelevant structures.

IV

We have travelled far from the beginnings of the Institutionalized Presidency in Franklin Roosevelt's second and third terms. The notions underlying those beginnings have been disregarded often as the institution grew, and are discarded by the Rockefeller plan. Yet it is tempting to suggest that in those notions the reorganizers still could find some useful guides.

What were the leading notions behind staff development some two decades ago? The answer to this question can be found, superficially, in the Brownlow Report of 1936, and in the papers, circa 1940, that Brownlow, Smith and others used to write for the Public Administration Review. But the superficial answer is scarcely the real one, or at least not the whole one. Those writings reflect the then fashion: they deal with "management" as though it were a thing apart from policy, and with "administration" as a thing apart from politics. The practice of these authors -- to say nothing of FDR -- was more sophisticated than their words suggest. To gain a full impression of the notions underlying staff development in practice, one must turn to sources of another sort: to Brownlow's written and oral reminiscences -- especially the latter -- to Smith's unpublished diaries, and to the memories of the few remaining Roosevelt aides in active life.

At risk of oversimplifying, let me summarize the notions that emerge from sources of this sort:

1. The White House staff was to be personal, unspecialized, and small, with FDR as "chief of staff." The things he personally did not do from week to week, the trouble-shooting and intelligence he did not need first-hand, were to be staffed outside the White House. The aides he did not have to see from day to day were to be housed in other offices than his. Inside the White House there would be some staff on regular assignments, not programmatic but activity assignments, handling his appointments schedule, press relations, correspondence, speech-and-message drafting, enrolled-bill reviewing, and the like. There would be some other staff (no more than he personally could supervise) on irregular assignments, gathering intelligence and trouble-shooting for him -- his "Administrative Assistants." The differentiation of their duties was to be not programmatic, but ad hoc. In program terms, the White House organization would be contra-functional, like the unspecialized position of the President himself.

With the coming of the war Roosevelt let this pattern bend, allowing in a Map-Room, a Hopkins, a Lubin, a Leahy, a Byrnes. But remarkably, he did not let the pattern break. The Map-Room was a super "Correspondence Secretary," Hopkins was a super "Administrative Assistant," Lubin was a personal statistician, Byrnes was functionally a "specialist," to be sure, and a "deputy," besides, but he was also ad hoc, temporary. Leahy was sui generis.

2. The Budget Bureau, built around the budget process with a task encompassing all government, was to be the President's main "institutional" resource for general-purpose staff work, complementing and supplementing the work of personal aides. The Budget staff was to be expert, impersonal, and "non-political", organized so as to view the whole of government in terms of three competitive perspectives: budgetary, managerial, and programmatic rationality. The competition was to be built into organization, with each outlook in a separate division and each division given work involving both the others. And each of these divisions was to be staffed contra-functionally, across-the-board of governmental programs. At the Director's level, where all staffs and outlooks met, the Budget Bureau thus would be as generalist, non-specialized, as was the White House. This institutional staff agency could not claim political perspective in personal, partisan, or "public relations" terms. That was the province of a personal staff. But it could claim, as personal staff could not, the resources to undertake preliminary and subsidiary tasks beyond the inescapable necessities of presidential business, day by day.

All sorts of things now thought to call for secretariats, or special staffs, or interagency committees were once sought from the Budget staff or from ad hoc inter-agency working groups assembled around specialists inside that staff. The oldest "secretariat" now operating near the Presidency evolved within the Bureau: its Office of Legislative Reference. The precursors of Eisenhower's public works inventories, aviation surveys, foreign aid reviews, and the like, were staff studies undertaken by the Budget in the 1940's. Of course, the capability to do such things depended on the calibre of Bureau personnel and on

the maintenance inside the Bureau of a strong "third force," the programmatic staff that Smith projected. At a time when it was thought that post-war policy concerns would be mainly domestic, Smith's Fiscal Division had at hand economists like Colm, Means, Smithies; a comparable "program staff" today would include men of equal competence in national security and international affairs. Nothing of the sort exists in the environs of the present Budget Bureau. The lack measures the distance we have come from early notions of the Institutionalized Presidency.

3. In Roosevelt's practice, his two general-purpose staffs -- the White House and the Budget -- were evidently conceived as a source of chore-boys, checker-uppers, reviewers, agents, fall-guys, emissaries, even ad hoc deputies, but not as the sole or even the main source of policy innovators and idea-men. Ideas and innovations were supposed to flow from inside the departments, from the Hill, and from outside of government; the staffs were there to save them from suppression, give them air, and check them out, not think them up. The staffs were not precluded from producing "happy thoughts," but they were not relied upon to be the chief producers. Neither were inter-departmental committees. Roosevelt lost taste for these in the course of his first term. Thereafter he never seems to have regarded any of them -- from the Cabinet down -- as a vehicle for doing anything that could be done by operating agencies or by a staff. This left small scope for such committees, which had virtually no place in early notions of the Institutionalized Presidency. The emphasis, instead, was on staffs and on operating agencies taken one-by-one.

To suggest that these early notions still provide a guide for the reorganizers of 1961 is not to argue that they should -- or could -- return the Presidency to its organizational status circa 1941, or 1946. The institutional application of each notion would have to be adjusted for great changes in the character and concerns of our government, and for a host of institutional developments which cannot be reversed. But I suspect that the adjustments could be made if there were will to do it. The will, though, is another matter and presents another issue: For what kind of President is the Presidency to be organized? An adaptation of Rooseveltian notions makes sense if one sees the office in Rooseveltian terms. It makes no sense if one conceives the office more or less in Eisenhower's terms. One could not organize the Presidency for Eisenhower around notions drawn from Roosevelt, Brownlow, Smith. By the same token, though, it becomes doubtful that one ought to organize for Kennedy or Nixon around notions drawn from Rockefeller. Whatever else may be said of our present candidates, both seem to be aware that even if they wanted to they could not get away with playing Eisenhower in the White House. This is a role reserved for heroes, barred to politicians, in the present state of the Union and of politics.

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PARTY THEORY AND POLITICAL REALITY INSIDE THE DEMOCRATIC PARTY

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler-Hilton Hotel, September 8-10, 1960

Neil Staebler, the able Chairman of the Michigan State Democratic Central Committee, has been saying for years, "There is nothing wrong with our political parties which more people won't cure."

Neil Staebler is right. But too many political scientists have not believed him. Instead, our profession has preferred to recommend nostrums deduced from the "party responsibility" theory.

Fortunately, advice such as that proffered by the Committee on Political Parties in its 1950 report, "Toward a More Responsible Two Party System," has been ignored by most practical politicians. Unfortunately, such advice has tended to confirm the natural suspicions which politicians hold about professors and ivory towers. For the truth seems to be that too many political scientists have not wanted to accept American political reality. Indeed, some have even heaped ridicule upon those who have suggested that the basic assumptions of the "party responsibility" theory are false and that the reforms deduced therefrom are unwise, unsound, and impolitic.

This paper rests on the thesis that a positive alternative to the "party responsibility" theory is needed as the foundation for future analysis of our political parties. That theory must try to incorporate the basic characteristics of American political parties as we find them. It should hold that to be effective, party organizational activity must recognize, be consistent with, and take advantage of the three fundamental characteristics of American political parties:

First, American political parties are semi-public. They are regulated by government in their organization, membership, nominations, and finance. Yet they retain many private attributes for they select their own officers, take independent stands on public policy questions, and raise money privately.

Second, American parties are decentralized. Power rests with the county central committees. State and national committees cannot compel cooperation from their constituent units nor punish them for political deviation.

Third, American parties are multi-group. People join them for a great variety of reasons, many of which are not based on public policy issues. Parties are united fundamentally by the desire to win elective office, not by a common philosophy or principle. Platforms and other expressions of policy direction are a <u>product</u> of compromise within the party and are designed to win additional adherents, create unity, and recognize the legitimate goals of the party's major com-

ponent groups.

In short, American political parties are arenas of compromise.[1]

The conclusion that effective party organization leadership requires behavior consistent with the "arena of compromise" theory of parties rather than the "party responsibility" theory is especially well illustrated by the service of Paul M. Butler as Chairman of the Democratic National Committee. Paul Butler became the most "controversial" chairman in recent party history at least in part because he believed in the party responsibility theory. He read the report of the Committee on Political Parties in 1950, took it seriously, and literally tried to apply its program to the Democratic party after he was elevated to leadership in 1954.[2]

Lest I be accused of going too far, let me couch my case in more academic language. Of course ascriptions of cause and effect really do not go beyond assertions of the sequence of events. Moreover, the actions of any politician are complex responses to varied pressures. Mr. Butler could have been merely a liberal Democrat who believed that his party should adopt and carry forward a consistent liberal program. The steps he adopted could have been undertaken principally to augment that goal, without benefit of any theoretical concept of the nature and purpose of parties. It might also be supposed that his primary concerns were to see his party win and to maintain himself in political leadership. But this paper cannot attempt to examine fully the chairmanship of Mr. Butler nor undertake a comprehensive account of its major events.

My thesis is merely that the consistency with which Mr. Butler undertook a number of the recommendations of the Committee on Political Parties despite vigorous opposition from other Democratic leaders and sometimes at considerable personal political risk, indicates strongly that he was motivated by more than a desire to forward liberal policies or a desire for party victory or even a personal desire to remain in office.

It happened that the concept of party responsibility was especially favored by liberal Democrats, some of whom had tried to promote their ideas through Americans for Democratic Action and had learned that he who controls the party organization calls the tune. The party responsibility theory fit both their intellectual temperment and their public policy objectives. Conservatives, not wishing an action program, and Congressional and local leaders, who already had control of party machinery, had no need for such a concept. So Mr. Butler found himself dependent upon support from the liberal intellectuals in his effort to remake his party.

My thesis, then, holds that Paul Butler "is a stubborn ideal-

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[1]For a more elaborate discussion of this point of view, see Claudius O. Johnson and Associates, American National Government, 5th ed. (New York: Thomas Y. Crowell Company, 1960), Ch. 10.

[2]Personal interview, August 2, 1960.

ist."[3] At least one of his major goals as Chairman of the Democratic National Committee was to make the Democratic party what it could not become: a "responsible" national political party. In this pursuit, he did violence to the basic principles of his arena-type party and brought down upon his head the wrath of several of its constituent elements. Fourteen points document the case.

First, early in 1953, as National Committeeman from Indiana, Paul Butler urged that the Democratic National Committee call a Mid-term Convention in 1954. This proposal of the "Toward a More Responsible Two Party System" report was politely interred by the party's Executive Committee, which reported the following resolution at the National Committee meeting of September 15, 1953:

> First, that we compliment the Honorable Paul Butler of Indiana for his excellent presentation of the proposal for a Mid-term Convention, and we earnestly hope that his proposal and others which have been presented will continue to be a matter of study by our party.
>
> Two, that the problems of cost and of many state and party regulations make it inadvisable that the National Committee contemplate holding a Mid-term Convention in 1954.[4]

Second, Mr. Butler's election as National Chairman on December 4, 1954 was viewed by the South as the selection of an understanding friend, not the victory of a champion of the liberals. Southern leaders united behind Mr. Butler[5] when he personally wrote out the following statement which was retained by John Sammons Bell, Chairman of the Georgia Democratic State Central Committee:

> I do not consider the question of segregation a political issue. I see no reason for any chairman of our party at any level to project segregation into our political discussions.
>
> As a lawyer, and if I were to be party chairman, I would consider it not to be a matter subject to political debate or political decision.[6]

Congressman Hale Boggs of Louisiana, who later became one of Paul Butler's critics, placed his name in nomination. Representative Boggs made it perfectly clear that he thought that Paul Butler, more than any other prospective candidate for the Chairmanship, believed in and understood the arena of compromise theory of political parties:

> . . . I learned to recognize his appreciation of the national scope of the Democratic Party.
>
> Ours is not a sectional party; it is not the party of the Mid-

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[3] Baltimore Sun, June 1, 1960.

[4] Democratic National Committee, Official Report of the Proceedings of the Democratic National Convention 1956 (Washington: Democratic National Committee, 1960), p. 521.

[5] Independent, Anderson, S.C., July 8, 1959.

[6] The Evening Star, Washington, D.C., September 12, 1959.

west or the North or the East or the West or the South. It is the party of the United States of America--and it is the only one. (Applause) But it is a party which recognizes the problems of each area of America. It recognizes the fact that Louisiana must have flood control and Colorado must have water. It recognizes all of the variable shades and the vastness of America, and yet it puts them all together to make the might of America, and I think that the man whom I shall nominate . . . best recognizes that about our country.[7]

Mrs. Lennard Thomas of Alabama and Stephen W. Langmade of Arizona seconded the nomination. Also nominated for chairman were Michael V. DiSalle of Ohio, F. Joseph Donohue of the District of Columbia, and James A. Finnegan of Pennsylvania. But only Florida among the Southern states either made or seconded a nomination for any of them.

When the voting came, Paul Butler had 70 votes. He won the undivided support of every state of the old Confederacy save Arkansas and Florida, but no votes at all from New York, Pennsylvania, Illinois, Ohio, and Massachusetts.[8]

Third, Mr. Butler immediately set out to formulate regular rules for the National Committee which would include the formal power to expel members who did not support the candidates for President and Vice-President and rules for the National Convention which would insure that delegates would support the national ticket. The Moody Resolution fight at the 1952 National Convention had led Chairman Stephen Mitchell to appoint an Advisory Committee on Rules to work out an acceptable "loyalty oath" for the 1956 National Convention, to streamline the Convention, and to suggest operating rules for the National Committee. Upon taking office, Mr. Butler asked Mr. Mitchell to serve as Chairman of the Advisory group.[9] Although this venture also was part of the suggestions of the Committee on Political Parties, its basic goal, unity to achieve political power, was consistent with "arena of compromise" politics. Moreover, the committee's work was wisely assigned to former Governor John S. Battle of Virginia and Senator Hubert Humphrey of Minnesota. The carefully worded, and essentially toothless, formula they produced could hardly be repudiated by either side of the controversy. It must be counted a Butler victory in which national objectives were achieved by useful arena-type methods.

At the meeting of November 17, 1955 the Advisory Committee reported these three fundamental recommendations which were adopted by the 1956 and 1960 National Conventions:

Resolved, that it is the assumption and understanding that a State Party, in selecting and certifying delegates to the Democratic National Convention, thereby undertakes to assure that voters in the state will have the opportunity to cast their election bal-

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[7]Democratic National Committee, op. cit., pp. 585-586.

[8]Ibid., pp. 597-600.

[9]Ibid., p. 688.

lots for the Presidential and Vice Presidential nominees selected by said Convention, and for electors pledged formally or in good conscience to the election of these Presidential and Vice Presidential nominees, under the Democratic Party label and designation.

. . . . . .

Resolved, that no commitment shall be required of delegates to the Democratic National Convention in the absence of credentials contests, it being assumed these delegates, when certified by the State Party, are fully qualified Democrats and will participate in the Convention in good faith. Therefore, no additional assurances shall be required of delegates to the Democratic National Convention in the absence of credentials contests or challenges.

. . . . . .

Resolved, that it is the duty of every member of the Democratic National Committee to declare affirmatively for the nominees of the Convention, and that his or her failure to do so shall be cause for the Democratic National Committee or its duly authorized subcommittee, to declare his or her seat vacant after notice and opportunity for hearing.[10]

Fourth, Chairman Butler worked to improve the status and prestige of the National Committee and of its individual members. Although he appears to have viewed this effort principally as a step in the building of a policy-centered national Democratic party, he thereby won the loyal and continuing support of a majority of Committee members. For example, at the 1956 National Convention he provided a private, chauffered, air conditioned automobile for each National Committeeman and woman.[11] This feature was repeated at the 1960 Convention.

Fifth, the Committee on Political Parties had strongly recommended measures to strengthen internal party democracy and organization. To that end, Chairman Butler in 1955 established an Advisory Committee on Political Organization composed of leading Democrats from various parts of the nation. Neil Staebler was made its chairman.

Mr. Staebler, who believes in applying group work techniques to encourage political discussion, stimulated his committee to explore at considerable length the organizational problems and needs facing the Democratic party. The experienced men and women who participated wisely proposed measures which took advantage of party decentralization and heterogeneity.

The first step, in 1957, was to create a Division of Political Organization in the National Committee to be headed by a Deputy Chairman. Drexel Sprecher of Wisconsin was named to the post.

Next, a system of regional representatives was established to assist the Deputy Chairman for Political Organization and to provide full-time field work with state and county central committees. Six regions were delineated: Northeastern, Southern, Central, Northwestern, Southwestern, and Western. In addition, Arthur Chapin of New Jersey

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[10] Ibid., p. 695.

[11] Ibid., pp. 831-833.

was appointed Assistant to the Deputy Chairman for Political Organization to give special attention to minority groups.

Six regional meetings, held around the country in September, 1957 to introduce the new system of regional representatives, generated the conviction that the training of party workers was an urgent organizational need. The Political Organization Division thereupon undertook what has now become four very promising ventures in leadership training: the Precinct Worker Training program, the County Leader Workshop program, the Leadership Conference program for state leaders, and the 'You Decide' or Neighborhood Discussion program. Adult educators were called in to prepare materials and to suggest techniques for meetings.

The Precinct Worker Training Program. Precinct needs were met first. The adult educators promptly prepared an instructor's manual which outlined an eight-hour precinct workers' course divided into two instructional sessions of three hours each and a two-hour field exercise. Modern group-work techniques were encouraged in the training sessions, which used films, buzz-sessions, panels, questions and discussion, role playing, field work and reports thereon, and listening groups. Formal lecturing was held to a minimum. A Precinct Workers Handbook also was prepared to serve as a "textbook" for each trainee.

The first step in implementation was to train instructors capable of presenting the precinct program. Beginning in November, 1957, fifty-six instructors courses were held in 36 states, with the bulk of the sessions coming in the first year of the program. Approximately 1,500 instructors were graduated. Hundreds of precinct workers training courses have since been given by the graduates, but no record exists of how many. Some 30,000 precinct handbooks have been sent out, most of them for use in training courses.

The County Leader Workshop Program. In August, 1959, a program to train county leaders was inaugurated. A county leaders' handbook had been previously prepared to serve as a "textbook" for the course. A carefully prepared manual for workshop leaders was issued September 15, 1959. Again a six-hour course using group work techniques was programmed to cover topics such as "Problem Analysis," "How To Conduct Effective Meetings," "How To Get Good Press," "How To Finance Your Party," 'Candidate Recruitment' and "Campaign Planning." The program, operating on a "do it yourself" basis, has gone over well.

The Leadership Conference Program. Beginning in the summer of 1959 and continuing through the spring of 1960, state party leaders in each of five different regions were invited to a three-day conference at a central city. No training manual was used and no "text book" prepared. Instead, three people experienced in adult leadership were sent to conduct each conference. Basic group work techniques were followed. Each party leader was given a loose-leaf notebook with index tabs for the major topics so that he could jot down the ideas he wanted to keep. Discussions centered on "The Many Duties of a Party Leader," "How to Get People into Politics," "What Makes an Organization Effective?" "Understanding People--the Leader's Job," "How to Share Leadership," "Improving Party Relations," and "Simple Steps in Solving Political Problems." State leaders themselves played the roles in problem-scenes which showed how one might deal with a labor organiza-

tion or how to placate a dissident party faction.

The "You Decide" Program. At the 1960 National Convention a new neighborhood discussion program was launched. Seven elaborate "flip charts," designed to stimulate discussion, were prepared and more were planned. Accompanying each "flip chart" was material to enable any interested party member to lead a discussion of the facts and problems raised. Emphasis was placed upon participation in small groups rather than speech-making by a discussion leader. Adult educators have again been called in to help prepare materials and to help train those who volunteer as discussion leaders.

Although some scoffed at these efforts and others even argued that they were a waste of money, no one could actually claim offense. The outcome of the 1958 election, the success of the 1958 and 1959 Dollars for Democrats Drives, and the creation of sparkling new volunteer political organizations in many states which long had been Republican strongholds soon muffled the doubters.

Sixth, following the election of 1956, Chairman Butler initiated another suggestion of the Committee on Political Parties: a national council which could make pronouncements on policy questions. The Advisory Council of the Democratic National Committee appears to have originated as a suggestion to Mr. Butler from Philip B. Perlman, former Solicitor General of the United States, immediately following the election. It was established by a resolution of the Executive Committee of the Democratic National Committee on November 27, 1956, "to coordinate and advance efforts in behalf of Democratic programs and principles."

Membership on the Council was publicly extended to the leaders of both houses of Congress, to key governors, and to other distinguished Democrats.[12] Of the twenty invited, twelve declined. The refusal particularly of Speaker Sam Rayburn, Senate Majority Leader Lyndon B. Johnson, and other Congressional leaders was widely interpreted as their rejection of an attempt by Mr. Butler and the Executive Committee to give the National Committee a new role in guiding Congressional policy.[13] Acceptance of membership came almost entirely from the liberal wing of the party and included Adlai E. Stevenson, Harry S. Truman Governors Averell Harriman and G. Mennen Williams, Senators Estes Kefauver and Hubert Humphrey, and Mayor Raymond Tucker. Mrs. Eleanor Roosevelt agreed to serve as a consultant. Later former Senator Herbert H. Lehman and Governor Stephen L. R. McNichols were added. In 1959 a determined effort to add leading senators and governors brought in Governors Edmund G. Brown, LeRoy Collins, Orville L. Freeman, and Foster Furcolo; Senators John F. Kennedy and Stuart Symington; and Mr. George M. Harrison, a ranking labor leader. The 14-man Executive Committee also automatically served on the Advisory Council.

Despite the opposition of his party's Congressional leaders, Mr. Butler sturdily defended the Advisory Council as a means for rally-

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[12] Democratic National Committee, Press release, Dec. 5, 1956.

[13] The Washington Post, Dec. 14, 1956.

ing the party behind its statement of policy:

> When the Executive Committee set up the Advisory Committee it gave that group a rather broad charter, namely, "to meet with the Executive Committee of the Democratic National Committee from time to time at the call of the Chairman to coordinate and advance efforts in behalf of Democratic programs and principles."
>
> In some quarters this seems to have been interpreted as an effort to dictate to the Congress or to encroach upon its powers. It is not such an attempt and neither I nor the Executive Committee has so considered it.
>
> It is, however, an effort to make use of the views of Democratic leaders both in and out of the Congress and also to give some form of national representation to the millions of Democrats who are not represented by a Democratic Congressman or a Democratic Senator. Moreover, it is an effort to rally Democratic leadership outside the Congress behind the efforts of the Congressional leadership to enact legislation to carry out the Democratic platform.[14]

He went on to list four "specific areas of activity outside the field of federal legislation" for the Council: state legislation, foreign policy, development of new ideas and principles, and intra-party affairs such as "(a) formal rules for the Democratic National Committee (b) new fund-raising programs (c) political strategy and tactics (d) party organization (e) communications both within the Party and between the Party leadership and the general public." He concluded:

> These are some of the activities I shall propose to the Advisory Committee. I think they are worthwhile programs. I know they represent a sincere effort to improve upon existing Democratic Party machinery and to enlarge its capacity to provide more responsive and responsible government. They are intended to help our Nation and our Party. I am confident that the Advisory Committee, working with the cooperation of our Congressional leadership, will prove to be an effective and successful addition to American politics and government.

Opposition to the Advisory Council came not only from Congress but from Southern party organization leaders. In September, 1957, following a two-day unity and strategy conference of Democratic leaders in Raleigh, North Carolina, Neville Bennett, Chairman of the South Carolina Democratic State Central Committee, declared, "it is impossible for us to cooperate under the perpetual bombardment of the National Democratic Advisory Council." He was reported to have added that he resented the effort of the Advisory Council to speak for the party and observed that it "is not an official body and has not been elected by party members."[15]

Nevertheless, the Advisory Council was formally authorized by a resolution adopted by voice vote at the Democratic National Convention of 1960.

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[14] Democratic National Committee, press release, Dec. 18, 1956.

[15] Atlanta Constitution, Sept. 20, 1957.

Seventh, when discussing the segregation issue, Chairman Butler repeatedly endorsed the "party responsibility" concept that a political party is united by philosophy or principle. On September 17, 1957, during the height of the Little Rock school crisis, he astonished Southerners at the Raleigh conference with the declaration, "The Democratic Party will not pull back" from its stand on the Supreme Court decision in the Brown case. Then he added:

> Frankly, there has been some discussion at the closed sessions here of a possible third party developing in the South. Let me make it perfectly plain, the Democratic Party nationally will not (in any way permit) a third-party threat to deter it from its long-held determination to serve the best interests of all Americans, regardless of race, color or creed.[16]

Reports of the meeting indicated "audible gasps" from the Southern members present.

Neville Bennett immediately demanded Butler's resignation, saying:

> On the basis of his comments and the comments of others at the conference I feel that he no longer is due the cooperation of any of the Southern states represented there. The concensus of the delegates here is that the national party needs a new chairman and promptly.[17]

Mrs. Lennard Thomas said that "she would never have thought that any Democratic national leader would 'so insult the loyal Democrats of the South.'"[18]

A year later, on October 18, 1958, in a famous television interview on "College News Conference" Mr. Butler even invited Southern segregationists to leave the party. Asked by one of the students if he agreed with President Truman that it would be "good riddance" if men like Senators Harry F. Byrd and James Eastland were to leave the party, Mr. Butler replied:

> . . . I think that the basis upon which devotion to the Democratic Party in 1960 is based either by people in the south or elsewhere in the country should be upon the basis of conviction on the issues and I see the integration and desegregation problem in fact the whole racial problem--it is a moral issue for the country and it requires moral leadership.
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> . . . . . .
>
> I believe that there will be no compromise on the integration problem, certainly no compromise position by the Democratic Party in the 1960 platform and because of that, as I've said before, I think that those people in the South who are not deeply dedicated to the policies and the beliefs in fact the philosophy of the Democratic Party will have to go their own way.

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[16] The Washington Post, September 18, 1957.

[17] Atlanta Constitution, September 20, 1957.

[18] New York Herald-Tribune, Sept. 18, 1957, p. 1 and p. 8. See also Atlanta Constitution, Sept. 20, 1957 and The Evening Star, Washington, D.C., Sept. 19, 1957, p. A-10. Mr. Butler replied, "I will not resign. I don't believe they're going to fire me."

ROGERS: You don't care if they go their own way?

BUTLER: Well, I don't say that I don't care because we would like to have as many Americans as possible belong to the Democratic Party who believe in its principles because we believe that we are the Party that has the right kind of philosophy for the best interests of our country and we'd like to have the people in the South, too. But if they don't want to go along on the racial problem and the whole area of human rights then I think they are going to have to take political asylum wherever they can find it, either in the Republican Party or a third party.[19]

Asked specifically if this meant Governor Orville Faubus and Senator James Eastland should leave the party, he replied that it did and added:

> I would say that anyone who is unwilling to accept the platform of the Democratic Party in 1960 and anybody who is going to stand up in America today and say that we shall resist the decisions of the Supreme Court, and we shall not recognize the basic principles of law and order upon which this nation exists, then I certainly would hope that they would take leave of the Democratic Party.

Southern Democratic leaders were furious.[20] Congressman Kenneth A. Roberts of Alabama telegraphed Mr. Butler, "It would be far better for the party and the country if you resigned your affiliation with the Democratic Party." Senator George Smathers of Florida, Chairman of the Democratic Senatorial Campaign Committee, who was facing the last two weeks of the national Congressional campaign, observed, "What we need is unity, not dividers. What we need are peacemakers, not agitators."[21] Harry S. Truman commented, "I do not agree with Mr. Butler. I am not reading anyone out of the party. We want all of the people in our column that we can get."[22]

Undaunted, Mr. Butler, in a post-election interview November 7, added fuel to the flames by suggesting that the Democratic party could win the 1960 election even if the South bolted.[23] Then, despite the continued Southern objections, Mr. Butler reiterated the concept of national party unity on civil rights when he spoke before the Ford Hall Forum in Boston, April 26, 1959:

> We in the Democratic Party are proud of our status as the only truly national party of the Nation. We have every intention and determination of remaining so. But I want to serve notice on those who think that it may be necessary to purchase this national

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[19] Copies of the transcript are on file with the Democratic National Committee.

[20] Sacramento Bee, Oct. 21, 1958; New York Herald-Tribune, Oct. 22, 1958.

[21] Sacramento Bee, Oct. 21, 1958, p. A-6.

[22] The New York Times, Oct. 23, 1958, p. 1.

[23] The New York Times, Nov. 8, 1958.

status or to achieve political advantage at the price of chiseling on human freedom, and deviating from the platform positions taken by our Party in three national conventions, that the responsible leadership of the Democratic Party, nationally and in all sections of our Nation, rejects that sort of compromise. While there may be dissent within our Party regarding some of these policies, there will be no waivering from the course of stating clearly to all sections of the Nation what the national policies of our Party are and will be.

Under no circumstances will we, or can we, undertake to read anyone out of our Party, but we can and will make sure that the morally sound concept of human rights stays in.[24]

Mr. Butler also accepted the Committee on Political Parties' contention that a party should be centralized and national so that its members in Congress would carry out the party's platform. On Sunday, July 5, 1959 over the "Celebrity Parade" television program of the American Broadcasting Company he touched off a "feud" with Congress by answering frankly, from the "party responsibility" point of view, two very pointed questions from the moderator, Joseph McCaffrey. Asked if he thought there were two Democratic parties, a Congressional party and a National party, Mr. Butler replied:

Well, I think that there is apparent in the Democratic Party some very deep cleavages and differences of opinion, and generally will more or less resolve themselves into a party that has a national outlook and the Congressional leadership, whose outlook is highly regionalized, I think. This is due, I think, to the procedures and rules governing the Congress, where seniority applies and where members of the Democratic Party from Southern states, both members of the Senate and House, have longer service, longer tenure than Democrats generally from Northern Congressional Districts, or Northern States for Senators, and the seniority system lends itself to the build up of power and influence, control of committees; by Southern Democrats, when the Democrats are in control of Congress. And this point of view generally expressed by these Southern leaders does not represent the national point of view. But we have been striving in the Democratic Party to make the party more responsible and more responsive to the needs and demands of the people, and this can only be done on a national basis, and we believe we have to try to influence the Democratic leadership of the Congress to come along with the national program, rather than the more conservative and moderate program which they are trying to follow.

Asked later in the same program whether the Congressional leaders had not been too cautious and too willing to meet White House objections, and whether this would affect the issues in 1960, Mr. Butler further remarked:

. . . I think that by the time we get to the Democratic Con-

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[24] Democratic National Committee, Publicity Division, "Address by Paul M. Butler, Chairman, Democratic National Committee, Before the Ford Hall Forum, Boston, Massachusetts, April 26, 1959."

vention in July, 1960, that the Democratic leadership and membership of the 86th Congress will have provided for our party a very strong record of legislative achievement. Now, there is no denial of the fact that Democrats, and quite a few Democrats around the country, are unhappy about the progress that has been made in the first session. I think that the leadership is aware of this dissatisfaction. I'm hopeful that the attitudes and policies of the leadership will change and that we will begin to realize that in these issues that come before the Congress, there is a vital part to be played in the solution of these issues affecting the 1960 Presidential Election. . . . Now, I think the burden is upon the Democratic Party, the responsibility is upon the Democratic Congress, to show the initiative and positive progressive attitude towards legislation. Unless we do, we are going to be in a tough situation in 1960.[25]

His statements were immediately taken by the press as an open attack on the leadership of Senator Lyndon B. Johnson and Speaker Sam Rayburn. A storm of protest arose from Congress.[26] Most important were objections from Senator Theodore Francis Green and seven Western senators, among them Henry M. Jackson.

The addition of Congressional demands for the removal of Mr. Butler from the chairmanship led to extensive press speculation on the topic[27] and a rejoinder from the embattled chairman that he would not resign nor likely be removed.[28] Indeed, Mr. Butler even called a news conference to reiterate his point and to assert that the Congressional Democrats were going to try to dominate the 1960 National Convention and to put one of their number, probably a Western Senator into the Chairmanship.[29] Peace was resumed after a friendly talk between Chairman Butler and Senator Johnson and Speaker Rayburn in the latter's office July 24.[30]

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[25]The transcript is in the files of the Democratic National Committee.

[26]See Congressional Record for July 6-14, 1959. See also Baltimore Sun, July 10, 1959; New York Herald-Tribune, July 12, 1959, pp. 1, 26; July 13, 1959, p. 1. Most major newspapers carried stories.

[27]See especially the syndicated columns of Robert S. Allen and Paul Scott for July 22, July 30, 1959 and Arthur Krock, "Butler Needs Allies in Democratic Battle," New York Times, July 19, 1959.

[28]New York Herald-Tribune, July 20, 1959.

[29]Ibid., July 13, 1959, p. 1.

[30]Ibid., July 25, 1960, p. 1.

Ninth, Mr. Butler accepted the "party responsibility" notion that Members of Congress who do not support the party position should be disciplined. In late October, 1956 Mr. Butler was reported to have suggested that he would "expect" the Democratic leadership of the House of Representatives to deprive Representatives Adam Clayton Powell of New York and John Bell Williams of Mississippi of their Democratic committee assignments for their public support of President Eisenhower and a States' Rights ticket for President respectively.[31]

Tenth, Mr. Butler also followed the report of the Committee on Political Parties by urging that Congressional office be awarded on a basis other than seniority. On November 2, 1958, on the eve of the smashing Democratic Congressional elections victory, Mr. Butler told the television audience of "Face the Nation" that the seniority rule for committee chairmanships and assignments "is a problem for the Democratic Party, because the fact is that the South has produced many Congressmen, and many Senators who once elected stay in either House for many, many years." He added that "there probably will have to be some consideration given to the possible finding of some other system that might apply in this case."[32]

Eleventh, the concept that a political party is united by principle or philosophy, the central idea in the "party responsibility" theory, was a recurrent theme in the many speeches Mr. Butler gave throughout the nation during his incumbency. He felt that the Chairman should accept invitations to appear as a policy spokesman for the party. Two good examples must suffice:

On "College News Conference," October 19, 1958, Mr. Butler said:

> . . . We have a political philosophy and we want to project our political philosophy openly and fully and completely so that the American people can understand it, and if they believe in it, support it, and if they don't believe in it support some other political party and some other political philosophy.[33]

On Saturday, May 16, 1959 at the Western States Democratic Conference in Denver, Mr. Butler urged:

> Our course must be to remain firm but just in our determination to stand for the right as we see it.
>
> We must remain faithful to our pledges to the people and take as our proper standard of judgment of our policies not what is the most expedient, not what someone believes to be "attainable," not what merely gives an appearance rather than a reality of action, but rather how fully do our acts measure up to the real needs of our nation and our people.
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> The Democratic Party is not a party of accommodation or attainability or compromise. People who are willing to accommodate themselves and the objectives of the Democratic Party to existing obstacles and obstructions to achievement do not typify the real

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[31] The Evening Star, Washington, D.C., Oct. 30, 1956.

[32] The Philadelphia Inquirer, Nov. 3, 1958.

[33] The Transcript is on file with the Democratic National Committee.

spirit, the true courage or the genuine zeal of our Party. . . .

The Democratic Party is a party of principle. It is a party with deep convictions and, as Woodrow Wilson once said, a party of great emotions. The Democratic Party is one that believes strongly in positive government and vigorous leadership in both the executive and legislative branches of our federal government. It is a party which recognizes its responsibility to work and fight for the achievement of those things which are vital to our national security and well-being.[34]

Twelfth, Chairman Butler sought to achieve financial independence for the Democratic National Committee. Beginning in 1957 a "sustaining membership" program was instituted in which individuals were made members of the National Democratic Party if they contributed $10 or more per year directly to the Democratic National Committee. Thousands of individuals put their names on the list and by 1959 gave nearly $250,000 per year to pay one-third of the Committee's bills.

This, among other things, outraged the leaders of the urban states, particularly in New York, Pennsylvania, and Illinois. They replied with the traditional weapon of decentralized parties: failure to meet quota payments. Instead of resorting to peaceful negotiations with the dissidents, Mr. Butler made war. On August 10, 1957 he declared in Los Angeles:

> We cannot move ahead at local, State, or national levels if saboteurs within our party for selfish reasons attempt to wreck our programs and halt our progress. Already, at the national level, we are witnessing the beginning of efforts by a little group of men to capture control of our party's national organization in order that they may dominate the 1960 National Convention and dictate the nomination of our presidential and vice presidential candidates. These are the very men who would weaken the prestige and influence of the office of national chairman in order to gain their ends. These are the men who would sacrifice our unity, our strength and future as a party in order to insure their own power and control.
>
> So long as I am privileged to be national chairman of our great party, I will resist vigorously any and all attempts by any clique or small group to gain control of our national party.[35]

Recurrent in-fighting flared amid reported northern big-city efforts to oust the Chairman. In February, 1959 an effort was reported under way by northern leaders to replace Mr. Butler with Matthew H. McCloskey of Philadelphia, Treasurer of the National Committee.[36] More intensive efforts from the same quarters and especially including Governors DiSalle and Tawes were reported the following July.[37] and again in early 1960. In September, 1959 Mr. Butler and Governor David

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[34] Democratic National Committee, Publicity Division, "Excerpts from Speech of Paul M. Butler, Chairman, Democratic National Committee, Before Western States Democratic Conference, Denver, Colorado, Saturday, May 16, 1959." Press release.

[35] Transcript in files of Democratic National Committee.

[36] The Philadelphia Inquirer, Feb. 25, 1959, p. 2.

[37] Madison Capital Times, July 30, 1959.

Lawrence of Pennsylvania exchanged unpleasantries after Chairman Butler accused Governor Lawrence of joining with segregationsists to oust him. Governor Lawrence had obtained a copy of Mr. Butler's 1954 pledge on segregation and had circulated it to other northern leaders.[38] Colonel Jacob Arvey, National Committeeman for Illinois, backed Governor Lawrence against Chairman Butler, saying:

> This (agreement) raises a serious question as to what kind of a man he is. In the first instance, he ducked the segregation issue to be elected chairman. Later he belabored the subject to stay on the job.
>
> If that isn't a phony liberal, I don't know what the term means.[39]

As a result, both Southern and Northern leaders held back money from the National Committee. As of June 30, 1960 quota standings covering 1957, 1958, 1959, and 1960 showed the following Southern holdouts:

State	Quota	Contribution	Per Cent Paid	Rank
Mississippi	53,000	4,726	8.9	54
South Carolina	63,500	7,337	11.6	52
Alabama	98,500	24,952	25.3	51
Kentucky	95,500	36,275	38.0	47
Louisiana	97,000	38,227	39.4	46
Tennessee	97,500	45,386	46.5	39
Texas	285,000	167,009	58.6	37
Georgia	101,500	63,378	62.4	35
Among northern urban holdouts, the leaders were:				
Illinois	248,000	85,301	34.4	48
New York	399,500	179,553	44.9	40

As an incentive for prompt payment, Chairman Butler announced that seating and housing at the 1960 Democratic National Convention would be allocated on the basis of the percentage of total quotas paid.[40] Thus the Maryland delegation, with a 164.5 per cent record, not only sat in front row center, but was housed at the Biltmore. Illinois, by contrast, found itself seated in the rear of the Sports Arena and housed at "a less than de luxe hotel in a run-down neighborhood bordering on skid row. Guest rooms have no air conditioning."[41]

Thirteenth, Mr. Butler's concept of the role of the party chairman reflected his "party responsibility" orientation. On July 19, 1959 he spoke out firmly in defense of the active leadership in party policies and programs he had tried to exercise, saying:

> When a party does not have one of its members in the White House, the national chairman, as head of the political organization, becomes the instrument to communicate to Congress what members of the party in all ranks are thinking.
>
> In the absence of a party member in the White House, the national chairman has a duty to remind all Democrats of our pledges.

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[38] See The Evening Star, Washington, D.C., Sept. 12, 1959 and Washington Post, Sept. 12, 1959.

[39] The Courier-Journal, Louisville, Kentucky, July 26, 1959.

[40] Democratic Digest, May, 1960, p. 27.

[41] Thomas O'Neill in Baltimore Sun, June 1, 1960.

Party officials have the same responsibility to the public that elected officials have.

This is especially true in my case because I was national chairman when our 1956 convention adopted our latest platform. Hence, I have a double duty to do what I can to see that our pledges are carried out.[42]

Again, at the Democratic National Convention of 1960, he insisted that the primary duty of the chairman was to provide policy leadership:

> . . . I have been told that the sole duty of the National Chairman is to maintain the unity of the party. The Chairman in this view should behave like the proverbial good child, to be seen but not heard.
>
> Unity is a pretty word, and I am all for unity, but what does it mean in this case? Does it mean unity without regard to conviction, without regard to principles, without regard to the ideals which already have been the lifeblood of the Democratic Party?
>
> I submit that unity on these terms is only a synonym for sterility and death. . . . A unity which rules out principle is a unity which we Democrats cannot afford if our party is to live and if our Nation is to prosper.
>
> . . . . . .
>
> . . . I am trying to do my small part in preparing the Democratic Party for its great task. I am trying to make the National Committee a clearing house for the ideas which we as responsible people must champion, or failing perish as human beings. It is our duty to listen to the many voices which listen to us, and the voices of all Democrats in all sections of the country, the voices of all citizens of our Nation, who know that when they catch our ear, that they catch the official ear of the Democratic Party. I have seen it as our duty to express their view as widely and vigorously as we can. I have assumed as an obligation of the Democratic National Committee, not the mere maintenance of unity, but rather a dedication to principles.
>
> Unity is founded upon principles, rather than upon men. This has not been an easy road to follow. If I had chosen to be all things to all men, if I had accepted unity at any price, the course would have been much easier.[43]

By contrast, Harry S. Truman had pointed out the duties of the leader of an arena-type party when he had had a private meeting with Mr. Butler in Independence, Missouri the previous September. He was quoted as observing:

> The business of the Democratic chairman is to keep the party together, not tear it apart. Nobody ought to be read out of the party. The business of the Democratic chairman is to do everything

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[42] The Courier-Journal, Louisville, Kentucky, July 19, 1959, Sec. 4.

[43] Proceedings of the Democratic National Convention, 1960, First Session, Monday, July 11, 1960 (Typed manuscript: files of the Democratic National Committee), pp. 35-37.

he can to keep the Democrats all in line.[44]

Fourteenth, Mr. Butler's concern for consistent national party leadership is reflected in the preparations for the 1960 Democratic National Convention and seems to have contributed directly to its outcome.

Speculation began as early as July, 1959 that Mr. Butler would try to shape the 1960 Democratic National Convention to insure a liberal platform and the nomination of liberal candidates. The selection of Los Angeles as the convention site, the designation of a permanent chairman other than Sam Rayburn, and several other moves were identified as parts of the liberal plan.[45]

Thus the stage was readied for 'the plot" to "thicken" in 1960. Mr. Butler's unfortunate remark in early 1960 that he thought Senator Kennedy would win the nomination, although apparently a product of impolitic candor, stimulated further objections from Speaker Rayburn and this time called down the wrath of Senator Hubert Humphrey and the liberals. The selection of Representative Chester Bowles of Connecticut and General Philip Perlman of Maryland to head the platform committee insured a thoroughly liberal platform with a strong civil rights plank. The selection of Governor LeRoy Collins of Florida as permanent chairman gave further impetus to the liberal orientation for he had made a striking record of moderate leadership on the sit-in issue and had accepted membership on the Advisory Council. The only concession to Congressional Democrats was the selection of Senator Frank Church of Idaho as temporary chairman and keynote speaker, but needless offense was given them by assigning doorkeeping duties to a local security force rather than to 'Fishbait" Miller, the traditional guardian of the House of Representatives and the Convention.

Harry S. Truman's famous Saturday press conference a week before the Convention and his subsequent refusal to go to Los Angeles therefore rested on a lengthy record, not a last-minute whim. And yet Paul Butler's reply that the Convention was not 'rigged" for any candidate was the truth. He could not select the delegates to insure a Kennedy nomination. The "rigging" was "party responsibility" rigging, to insure a Convention which would create the image of a national, liberal political party united by principle and willing and able to carry out its pledges. Paul Butler made this perfectly plain in his speech to the Convention:

> I want to make one thing very clear to all of you, my fellow Democrats. If the National Committee has taken a stand on issues, it has taken no stand on men. It is no part of the duty of the Committee or its Chairman to favor one candidate over another. Whatever my personal preference is--and I wouldn't be human if I didn't have them--I have tried to maintain a scrupulous neutrality among the candidates whose names will be presented to you. Nor on

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[44] The New York Times, Sept. 12, 1959, p. 1, col. 7, and p. 10, col. 2.

[45] William S. White in St. Louis Post-Dispatch, July 8, 1959 and Doris Fleeson in The Evening Star, Washington, D.C., July 7, 1959.

the part of the National Committee has there been any favoritism, any pressure, and, if I may borrow a currently popular phrase, any rigging whatsoever. (Applause)[46]

Thus Paul Butler himself, by five years of consistent and energetic striving to make the Democratic Party a cohesive, national, liberal party, set the stage for the politics of the 1960 Democratic National Convention. More than the designation of a Presidential candidate was at stake. Southern leaders, the urban party leaders of the North, and the leaders of Congress all separately but intensely desired the return to party leadership of men who would understand and follow the "arena of compromise" concept of political parties.

At the convention, many liberals backed Stevenson or Humphrey and thereby isolated themselves, for the party leadership showdown turned on the Presidential nomination. Kennedy leaned on the Northern urban leaders and organized labor, but also had significant liberal support. Johnson was backed by the South and most Congressional leaders.

The first ballot was decisive and Senator Kennedy moved immediately to consolidate his victory. The Northern urban leaders and organized labor, willing enough to accept the liberals if they would not control the party organization, were obliged also to accept the South, the Congressional leaders, and Majority Leader Lyndon Johnson for Vice President. Congressional control of the National Committee and the restoration of "arena" type leadership were achieved by the selection of Senator Henry M. Jackson as Chairman. Yet Jackson's liberalism could not easily be challenged and he was given a liberal Vice Chairman in the able Mrs. Margaret Price of Michigan.

And thus, at one blow, the Democratic party sought to restore the New Deal coalition and internal party harmony. The full wisdom of this course remains to determined in the next 60 days, but its fruits are already being harvested across the land.

Party theory, then, is the key to understanding the chairmanship of Paul M. Butler. He believed in the party responsibility theory and tried to carry out reforms which the Committee on Political Parties of the American Political Science Association had derived from that theory.

Other hypotheses do not offer a satisfactory explanation for his leadership. His statement in 1954 to Southern leaders suggests that he was not a dogmatic liberal. His own statement rejecting unity as an end in itself and his willingness to criticize Congress, northern urban leaders, and southern segregationists for failure to support the party platform indicate that internal harmony was not his overriding purpose.

Paul Butler is an idealist who viewed his chairmanship as a mandate to fight for what he thought had to be done to improve his

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[46] Proceedings of the Democratic National Convention, 1960, op. cit., p. 37. This passage followed immediately after the statement quoted at p. 16 above.

party and American self-government. Regardless of loss of personal popularity, open opposition within his party, and public criticism, he resolutely stuck to his guns.

But ideals, courage, and determination are not enough. The basic characteristics of American political parties in major part determine the effectiveness of any proposal and impose severe demands upon the methods by which a program can be implemented.

When Mr. Butler undertook programs consistent with party decentralization and heterogeneity and executed them with appropriate action, he won support or at least acquiesence. The rule changes of 1956 and the leadership training programs are good examples.

But where Mr. Butler attempted objectives designed to centralize the party or to achieve cohesion on philosophy or principle, especially if he undertook to accomplish his ends by vigorous personal leadership, he encountered opposition and refusal to cooperate. His mid-term convention proposal, the Advisory Council, the segregation issue, the attainments of the 86th Congress, and the use of the seniority system in Congress are good illustrations.

The party responsibility theory was given a solid test by as dedicated a supporter as it can ever hope to place in high party office. Its rejection by his party therefore places the burden for future recommendations upon those among us who urge improvements which are derived from the realities of political organization which American parties face. With Neil Staebler we must be prepared to show that there is nothing wrong with our political parties which more people--and more group work--and more painstaking local training won't cure.

THE ADMINISTRATOR'S ROLE — ISSUES AND HYPOTHESES

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8 - 10, 1960.

Public and Congressional concern about, and the interest of political scientists in, regulatory administration rise and fall in cycles. Only the affected interests and segments of the legal profession maintain a continuing concern in what the regulatory agencies do and how they do it. The cycle is now in the ascendant, in large part because of the exposures of the Harris (ne Schwartz) Committee and such occurrences as the Hector letter of resignation and the Connole controversy. While a few able political scientists have continued to toil loyally and productively in the regulatory vineyards, political approaches to regulation have progressed little beyond the concepts and hypotheses achieved in the New Deal days.

There is a crying need for more research. A recent Brookings seminar both illustrated and concluded that attitudes toward regulatory administration derive from choices of fundamental assumptions about the regulatory process and the values it should serve. The legal approach, the dominant orthodoxy of the day, assumes that regulation is primarily adjudicatory, that it is most akin to what the courts do, and that administrative procedures should be even more judicialized in order fully to protect the private interests involved. One political approach instead views the regulatory task primarily political, underscoring its resemblance to the work of executive agencies, and arguing that administrators must make policy and assume leadership if broad but regulatory policies are to be defined and effectuated, and if public goals are to be substituted for private nnes. A second political approach is more pluralistic and stresses the inherent technical difficulties of the regulatory programs, the multiplicity of policy criteria, and the sharp conflicts of affected interests. Since Congress was unable to declare a clear policy, this approach expects of regulation only the orderly and tension-relaxing adjudication and mediation of problems for which the community at large is not prepared to consider strong solutions.

The seminar demonstrated that there is surprisingly little knowledge available to support or test these approaches, which are rooted only in initial postulates or are grandly extrapolated from the limited experiences of one or two agencies. We know little about the broad range of regulatory experience, least of all about that of the executive agencies. We know little about the informal processes

which underlie or by-pass adjudication and may make it a mere facade or dwarf it in importance. As a result, most current literature deals with remedies for postulated ills rather than with careful analyses of actual practices and results. Furthermore, most of it is produced by lawyers, who focus on adjudication, on public records, and on the independent commissions (which look more like courts than do executive agencies).

The seminar also stressed the danger of generalizing too hastily and grandly about "the" regulatory process, pointing out the uniqueness of each agency's problems and of its political and technical environment. Thus some agencies confront multigroup constituencies, while others deal with but a single major interest. Some interests bitterly oppose regulation and seek to frustrate it: others seek to impose it on yet other interests, and some groups welcome or demand it as the equivalent of a federal Good Housekeeping Seal of Approval. And dissimilarities between types of regulation are striking. Safety regulation differs greatly from rate regulation, while licensing presents quite different problems than does the regulation of business practices.

Consequently, the seminar recommended studies of particular problems and policies in the hope of building up new generalizations more soundly based, and probably more limited in scope, than those which assumed that all regulatory programs presented similar problems requiring the same organization and procedure. It further endorsed policy oriented research, both to shed general enlightenment on regulatory administration and to counterbalance the emphasis of legal literature on procedure.[1]

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1 The seminar discussions and its resultant prescriptions for research are reported in Marver Bernstein and Mark Massel, "Research in the Regulatory Process: A Sugguested Program," and J.C. Palamountain, Jr., "Current Views on Regulatory Administration" (papers presented to the Conference on the Public Service, May 13-14, 1960).

Some research is underway — both Brookings and the Inter-University Case Program have begun modest programs — but much more is needed. Otherwise current Congressional and public concern is likely to fade away, leaving only a residue of trivial and probably vain efforts to ensure proper conduct by commissioners, or it will simply be used by the ABA in its drive further to "judicialize" regulatory administration [2]

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2 For a description and analysis of this offensive, see Ferrel Heady, "The New Reform Movement in Regulatory Administration," Public Administration Review (Spring, 1959), pp. 89-100.

—a process once believed to have been completed by the Administrative Procedure Act of 1946. In the absence of such research, those political scientists and administrators who believe in the policy-making responsibilities of regulatory administrators are forced to rely on approaches precariously resting on shaky factual underpinnings.

The best and fullest recent statement of the political and policy approach to regulation, although confined to regulation by independent commissions, is Marver Bernstein's Regulating Business by Independent Commission (1955). Based upon a survey and analysis of the literature, this study reaches fairly familiar conclusions:

> ... the commissions have not been satisfactory instruments.... They have been founded on a basically undemocratic concept of the political process and have helped to perpetuate naive notions about regulation of business, the virtues of group decision, and the uses of expertness. By insulating themselves from popular political forces, the commissions have subjected themselves to undue influence from the regulated groups and tend to become protective spokesmen for the industries which they regulate. By virtue of their emphasis upon formal procedures of adjudication, commissions gradually forsake the vigorous search for the public interest for the role of administrative tribunal. ...regulation by commission has not been able to match the ingenuity, imagination, and inventiveness of American business. It has been conventional in method, passive in attitude, and orthodox in the evolution of policy.
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> The persistence of myths about the qualities of independent commissions endangers the achievement of effective regulation of business in the public interest. Commissions have proved to be more susceptible to private pressures, to manipulation for private purposes, and to administrative and public apathy than other types of governmental organizations. They have lacked an affirmative concept of the public interest; they have failed to meet the tests of political responsibility in a democratic society; and they tend to define the interests of the regulated groups as the public interest. The effectiveness of regulation of business by commission hangs by a thin thread. As a method for ordering economic relations in society short of governmental ownership and operation, it has not proved itself.[1]

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1 Pp. 295-96.

But Bernstein himself, both in the book and in the Brookings Seminar, has been the first to admit that such conclusions require confirmation and correction through research.

This paper is a progress report on research performed during the past year.[1] It was concerned generally with the Federal Trade Commission

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1 Made possible by the generosity of the Social Science Research Council and the Inter-University Case Program.

Federal Trade Commission and focused specifically on the development of three cases — (1) a charge of false and misleading advertising brought against the claims made for Dolcin in the treatment of arthritis and rheumatism, (2) a charge of illegal price discrimination under the Robinson-Patman Act filed against Standard Oil Company (Indiana), and (3) an anti-merger complaint filed against Crown Zellerbach Corporation under Section 7 of the Clayton Act.[2]

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2 The first is scheduled for publication this fall by the ICP; the second should be completed during the current academic year; the third cannot be completed or published until its judicial appeals have run their course.

In view of the very bulk of the theories and assumptions to be tested, the danger of extrapolating from a few cases, and the vast amount of research ultimately required, this study is but a widow's mite. Furthermore, designed to illustrate actual practice and to raise many issues, these case studies do not focus especially on policy. Whatever contribution they may make results from the study of the voluminous public records — rarely touched by either political scientists or economists — and of the "inside" files, ordinarily safeguarded from prying eyes but opened to me because of Chairman Earl Kintner's conviction of the need for research.[3] These files consist primarily of the invest-

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3 My debt to Mr. Kintner is great. As General Counsel, he encouraged this study. As Chairman, he generously, almost foolhardily, made the inside files available, offered advice, but did not seek to direct my selection of cases or my interpretation of them. Also as Chairman, he provided me with the opportunity to see the FTC in its most productive and innovating year.

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igation records, internal staff memoranda, and the papers and memoranda written to assist the deliberations of the Commission itself. They shed a narrow but valuable beam of light into some of the darkest areas of informal commission behavior — the selection of cases, the decision

whether to take formal action, the role of the staff in influencing the conduct of cases and the making of decisions, and, what an ABA spokesman has called "the dark side of the moon," how the Commission, confronted with a voluminous public record, actually reaches its decisions.

I. CONTROL OF THE REGULATORY AGENDA

It has long been a truism in political analyses of regulation that "the regulatees tend to regulate the regulators," that the regulator agency tends to lose sight of its original public policy and to identify the public interest with the interest of particular private groups. Many reasons for this phenomenon are cited, including the vagueness of the agency's statutory mandate, the inadequacy of its resources, its isolation from centers of extra-industry political power, its constant proximity to those being regulated, and its dependence on industry compliance, cooperation, and factual resources.

FTC experience offers a somewhat different insight. Its regulatory jurisdiction includes most of the American economy, and it can exercise broad discretion in the application and interpretation of its statutes. Except for a few special programs such as its regulation of fur labeling, it does not have to live in common-law wedlock with any particular industry. Furthermore, it now has ample authority to conduct investigations on its own. Consequently, it should be free to decide which industries to investigate and against which firms to act. Yet a striking fact is that the FTC exercises but slight control over its own agenda. The button which starts the FTC's investigating, litigating, and deciding machine to hum is usually punched from outside.

This abandonment of control over the selection of its complaint investigations means that policy and its enforcement develop haphazardly. The confusing and ambiguous Robinson-Patman Act offers an illustration. Since the Justice Department has virtually ignored the Act, and private, triple-damage suits have done little to develp its meaning, it has been left for the FTC, through the selection and litigation of cases, to declare policy principles to be used in interpreting this baffling measure and to build up a clear and fully developed body of case law to guide business conduct. This burden is the greater beaause of the necessity of applying the Act to industries which vary exceedingly in their power structures, channels of distribution, discount and price structures, terms of sale, methods of cost accounting, and other trade practices.

But since the FTC has passively awaited complaints, and since some trade associations have been zealous in calling attention to alleged violations, some parts of the statute and some industries have produced many cases while others have received little or no attention.[1] Thus, of the

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1 This analysis owes much to Corwin D. Edwards' comprehensive study, The Price Discrimination Law (1959), pp. 64-91.

311 Robinson-Patman cases which led to cease and desist orders from 1936 through 1957, 34.7 per cent of the violations involved price discrimination by sellers (Section 2a), 43.5 percent involved brokerage payments (Section 2 c), 13.8 percent disproportionate payment for promotional services (Section 2d), 4.4 percent the disproportionate furnishing of sales service (Section 2c), and only 3.5 percent of the receipt of unlawful discriminations by buyers (Section 2f).

Concentration on particular industries is even more striking. Eighty-seven percent of the brokerage orders and over one-third of all other orders deal with food products. Of the 109 non-brokerage orders outside the food trade, 20 deal with drugs or medical, dental, or optical supplies, 18 with automotive parts, gasoline, and tires, 12 with books and school supplies, 11 with various rubber products, 9 with building materials and equipment, and the remainder are scattered. Thus the Act has been applied primarily to finished goods and to industries with relatively disorderly or fluid price and discount structures and with substantial competition at both ends of the market. T he discriminations attacked usually represent temporary advantages secured by the competitive maneuvering of one firm or group. Relatively few cases have arisen from more orderly markets, where the dominant power of one or more buyers or sellers has produced permanent discriminations or concessions.

Thus the passivity of the FTC has led to uneveness and lag in clarification of the ACt and in the building of meaningful case law. It has also meant that the more monopolistic a market is and the more securely entrenched its discriminations, the less apt they are to be questioned.

Other examples of the effects of surrendering control over the initiation of cases to outside parties could be cited. Thus antimonopoly complaints tends to originate in industries where a fair amount of competition exists. Where the market power of a single firm dominates a whole industry, competitors may be nonexistent or intimadated and customers or sellers fearful of antagonizing the dominant firm.

Furthermore, private parties not only initiate the FTC investigation; they may also shape the case made and hence the policy issue raised. Thus the Indiana Standard case[1] was initiated by the complaint of some aggrieved Detroit gasoline stations who protested that four "jobbers", who paid Standard 1 ½ less per gallon than did the complaining retailers, were passing

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1 It is FTC policy not to reveal the names of complainants, but this fact ultimately leaked out into the public record.

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on part of this concession on their retail sales to consumers and on some of their wholesale deliveries to other retailers. The last, in turn, were thereby enabled to cut their retail prices.

The marketing of gasoline is often a complex mixture of competition and monopoly because of alternative channels, price leadership, and incomplete integration of functions both by the dominant majors and by independents. The Detroit market was further complicated by the dumping there of excess gasoline refined elsewhere and by the growth of off-brands selling at less than major prices. It would have been a difficult task of economic analysis and judgment to determine whether Standard had selected its jobbers and given them jobber discounts to meet competition for their business, to bring about retail price cuts and so meet the competition of off-brands, or as a part of its normal system of classifying customers. It would also have been difficult to balance the desirability of these jobber prices as registering competition at the wholesale level and creating competition at the retail level against their undesirability as injuring retailers and as creating unfair retail competition. It would have been easy to determine that jobbers had a stake in the case. In fact, the investigation attempted none of these tasks. While the investigators did not accept the retailers' theory of Standard's price policies, they accepted fully their theory of the violation and of competition.

The case was litigated on a similarly narrow basis. One result was that, never having looked beyond the discrimination under attack, nor having analyzed the competitive consequences of the discrimination or of its abolition, the staff found itself writing, and the Commission approving, a cease and desist order which, in order to be effective, required resale price maintenance by the jobbers — a kind of anticompetitive price control the FTC had consistently opposed elsewhere. The Commission also found, to its surprise, that it was being politically assailed by jobbers — the very kind of small businessmen intended to be protected by the Robinson-Patman Act and which the FTC had prided itself in championing. Finally, in the course of the judicial appeals and Commission reconsiderations which constituted the remainder of the case's 19-year history, the FTC found itself reluctantly facing up to issues of competitive policy, but always on the basis of a narrow record, inadequate for an evaluation of the competitive significance of the discrimination.

Thus the FTC's broad powers to investigate and to issue cease and desist orders under broad legislative mandates really require outside initiation. Like the Supreme Court, it speaks only when spoken to, and like Congress, it does not control its own agenda.

This dependence on private parties obviously reflects excessive judicialization and lack of a strong policy orientation or of a sense of agency mission. It perhaps also suggests the general thesis that acceptance by a regulatory agency of a regulated industry's interest as the public interest may similarly result from private control of its agenda rather than from direct influence over the agency's decisions and attitudes.

The ICC, for example, is commonly described by political analysts as "railroad-minded". While evidence can be mobilized to support this allegation, it has become increasingly difficult in recent years to explain how it then is that the ICC has come to preside over the virtual dissolution of the railroad system. The concept of control of regulatory agenda offers a key to this puzzle. While the ICC may be railroad-minded, until recently it has been the truckers (and water carriers) who have controlled its agenda. Originally the ICC presided over a value-of-service rate structure, defensible so long as the railroads commanded a monopoly. Despite its statutatory mandates, the ICC never sought actively to define and promote the inherent advantages of each mode of transportation. Instead, it sat back, waiting for the cases to roll in and deciding each as a unique factual question. The ICC lacked a policy, but the motor carriers had one — that of diverting high-value, high-rate cargo from the rails to them — and they aggressively promoted it. And, until recently, the railroads lacked a policy, other than that of fighting a defensive, delaying action. Consequently, lacking a policy of its own, and ducking the policy-making tasks of examining the optimum economic division of traffic and or re-examining the railroad rate structure, the ICC found itself acting on an agenda set by the motor carriers. It confronted a long series of cases in which truckers sought to bid with lower-than-rail rates for certain hauls of certain commodities. However railroad-minded the Commission may have been, unless it flatly rejected every request for a rate change, it was bound to aid the truckers and harm the railroads. Since both the ICC and the railroads lacked a policy, that of the motor carriers has prevailed.[1]

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1 For an analysis of these cases, see E. W. Williams, Jr., The Regulation of Rail-Motor Rate Competition (1957).

II

FOCUSING OF STAFF EXPERTISE, OPINION, AND JUDGMENT

The staff's contribution to the making of policy has been relatively neglected in the literature. The original belief was that the staff would bring to bear upon common problems the expertise derived from various disciplines and areas of experience, so that agency decisions would be based upon an understanding of all relevant analyses and criteria. The agency's presumed independence from politics and escape from the rigidities and routines of the executive establishment were to enable the staff to define and promote the public interest flexibly, expertly , and aggressively. What general criticisms there are stress poor management and organization, usually attributed to the lack of a single responsible head, and the cramping effects of judicialized procedures on broad staff participation.

The research upon which this paper rests yields somewhat conflicting evidence. It is clear, however, that the fact that the FTC seeks to establish policies, to lay down guide lines for business conduct, primarily through cases, imposes serious restraints on the ability of staff members to contribute to the development of policy. That is, the question here is not the familiar one of how distinctly policy has emerged from the FTC's cases, but, rather, the ability of staff members to shape and direct that policy development.

The weakness of staff influence on policy derives in part from the predominance of lawyers. It may be true of the genus, and it is certainly true of the FTC species, that lawyers tend and prefer to focus on the uniqueness of a case and neglect its policy implications and possibilities.

A second limitation arises from the fragmentation of responsibilities in the preparation, negotiation, and litigation of cases, the sheer volume of cases demanding attention, and the length of the proceedings. Thus in the relatively simple, although fully litigated, Dolcin case 10 ½ years elapsed between the start of the investigation and the first acceptance of a compliance report. The legally tangled Indiana Standard case consumed 19 years, and the Crown Zellerbach case, the object of special expedition, is now in its eighth year.

The combined effect of these two factors is registered in a few statistics: Forty-six members of the FTC staff at some time in the Dolcin proceeding played important roles, such as litigating the complaint, presenting oral argument, or drafting briefs, memoranda, or decisions. Only two of them, members of the medical staff, were nonlawyers. In the fiscal year in which the Dolcin investigation was begun, the then Bureau of Legal Investigation, with a budget of but $491,184 (less than half the amount spent that year in advertising Dolcin) had on hand 1,378 cases docketed for investigation in earlier years and received another 1,177 complaints. And in the year in which the then Medical Bureau evaluated Dolcin advertising, its staff of but three medical officers prepared 225 written opinions and many oral ones, assisted FTC lawyers in hearings, and obtained 36 expert witnesses for testimony.

Furthermore, cases develop lives of their own, often pursuing unpredictable courses and raising unexpected issues. What begins as a case intended to advance one policy or eliminate one practice may come to center on quite different issues. Thus the bulk of the Indiana hearings was devoted to the cost justification issue, comprising, indeed, the longest litigation of this issue ever to arise under the Robinson-Patman Act, but it faded from sight after the Commission decision and was never raised in the case's reconsideration by the Commission, nor in its three appearances before the Circuit Court and its two appearances before the Supreme Court.

The various approaches or theories under which the FTC conducted the Standard case illustrate some of the effects of fragmentation and of the evolving character of a case. The investigation and litigation before a hearing examiner was concerned primarily with proving that discounts had been granted some jobbers and that they had enabled those jobbers and their customers to lower their prices and so injure other retailers. The approach was as narrow as that of criminal law, with no general examination of gasoline marketing and no economic analysis of the Detroit market or of the effects of the discount other than those on certain retailers. Before the Commission and the courts the dominant issue urged by FTC counsel involved interpretation of the Robinson-Patman Act's "good-faith competition" proviso, which could have had an impact on substantive policy but which was largely discussed by the FTC staff in terms of legislative history and the burden of proof in price discrimination cases. When the case returned to the Commission, it first yielded the finding that there could be no good faith competition where discounts injured competition and were not cost justified. When the case re-entered the courts, however, the argument was that use of a pricing system could not be regarded as good fatih competition.

Thus it would be partially valid to say that the handling of cases is haphazardly autonomous, marked by a narrowly legal approach, calling for the selection for formal complaint of those cases most easy to win and the selection of whatever issues, arguments, and evidence are most apt to produce victory and providing little consideration of policy implications. Furthermore, the FTC's non-legal staff is small, of uneven quality, and often ignored. Thus in the Indiana case, which raised important economic issues and was first decided by the Supreme Court on the basis of economic analysis, no FTC economist gave advice until the case was 13 years old and when the second Commission decision and order had already been drafted.[1] Throughout the long history of this case only two FTC economists and three accountants were tapped for advice.[2]

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1 During pre-complaint investigation, the Commission did address a question to a staff economist, but he misunderstood it and gave a non-responsive answer.

2 On cost justification questions, however, the FTC lawyers defer to the accountant, who is vested with virtually full Commission authority; his opinions, expressed in the hearings, are usually controlling. No examiner has ever reversed a recommendation of the accounting staff, and the Commission has only twice disagreed with such a recommendation.

Yet instances can be cited in which individual staff members have had a considerable policy impact through their influence on particular cases. Indeed, their impact highlights the agency's general policy vacuum and the lack of policy orientation on the part of most of their

colleagues. Thus Dolcin and a companion file were selected for quick action by two FTC doctors who had become concerned over the appearance of a dozen aspirin-based remedies making dubious claims for the relief or treatment of arthritis and rheumatism and thereby competitively disadvantaging a number of aspirin-based general analgesics whose advertising claims had earlier been restrained. Recognizing a need for general rules governing the advertising of all aspirin-based remedies for arthritis and rheumatism, they determined the restrictions they wished to impose and sought so to shape the handling of the two selected cases as to put those restrictions into effect. Despite some disagreement with their legal colleagues, inevitable delays, and many procedural complications, and despite Circuit Court amendment of the Dolcin order, they finally achieved victory in the companion case. This winning of a precedent establishing case then enabled the reaching of agreement on similar restrictions on a dozen other remedies and established guide lines apparently observed by other remedies.

A more far-reaching achievement was that of a lawyer, who, virtually singlehandedly and in the most moribund years of the FTC, nursed a series of cases through investigation and litigation. The Commission itself was not fully aware of their significance, and it was not until the Supreme Court affirmed them,[1] that the Commission, and

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[1] The crucial cases were: Corn Products Refining Co. v. FTC, 324 U.S. 726 (1945); FTC v. A. E. Staley Mfg. Co., 324 U.S. 746 (1945); FTC v. Cement Institute, 333 U.S. 683 (1948).

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the nation, realized that they apparently empowered the FTC to dissolve all basing-point pricing systems — then used by many and powerful industries. Im the teeth of the resultant political storm, the bewildered and timid FTC retreated, never making full use of its new powers, but the lawyer had shown what one man, with definite goals and with patience, could do in 11 years of careful preparation and litigation.

III POLICY-MAKING BY COMMISSIONERS

The role of the commissioners themselves in the making of case decisions and of policy has often been debated. Legal observers frequently argue that the "real" bases for commission decisions do not appear in the public record. And it does seem that some commissions follow policies never made part of the official record. Is it, for example, only coincidence that since 1953 no Democratic newspapers have been awarded licenses in contested TV cases?

It is frequently asserted that informal staff influences on commissioners make a facade of the adjudicatory procedures leading up to a commission decision. Those "inside" FTC files I have examined, however, reveal nothing that is shocking or even surprising. In the issuance of findings, orders, and opinions the Commissioners since 1946 have sought the advice and assistance only of their special assistants. In its non-judicial decisions, such as those on the issuance of complaints, the making of investigations, the filing of appeals, or the seeking of injunctions, the Commission may receive the advice of many staff members. And these memoranda are about what might be expected: in most decisions there is only one staff recommendation, usually endorsed by administrative superiors and adopted by the Commission: but frequently lawyers disagree with lawyers on a legal interpretation or on a course of action; and lawyers and non-legal experts may disagree on a point involving the combination of legal with other opinions.

The degree to which the Commission has made its own decisions, however, has varied considerably. In the dead days of the early 1940's it fairly automatically rubber-stamped staff recommendations and accepted without change the generalized descriptions and boiler-plate proscriptions of the findings, rulings, and orders drafted by its special assistants. On administrative decisions it rarely returned a matter for further opinion or information. On judicial decisions the Commissioners participated little. They did not ask questions in oral arguments, and the individual Commissioner presenting a draft decision simply prepared an abbreviated version of the explanatory memorandum drafted by his special assistant. In both respects there has been substantial improvement, but decisions, at least until recently, still receive less than full administrative or judicial review. Apparently too many administrative recommendations are received to permit more than cursory consideration, and the Commission seldom avails itself of the breadth of staff advice available to it. Individual Commissioners participate morein the drafting of opinions, findings, and orders and may demonstrate mastery of cases assigned them, but in oral arguments their colleagues often reveal an ignorance of the basic facts or elementary issues of a case a few hours before they make their tentative decision on it.

But regardless of the quality and conscientiousness of individual Commissioners, many of the factors which deny the FTC control over its agenda and which weaken the staff's influence over the policy content of cases also operate to make it most difficult for its five Commissioners to play their crucial role — that of directing or at least influencing what the FTC does and of setting its policies. Yet theirs is the ultimate responsibility that the agency be, as it was intended that it be, a specialized, expert body, charged with putting concrete meaning into the broad, vague terms of its basic legislation. In a sense, it was to be a "businessmen's court," its flexibility and informality enabling it to develop ruling principles and case law more rapidly and flexibly than could the judges. At the same time, it was to be more committed to antitrust goals, to be more active, forceful, and policy-minded, than the judges.

Simple mathematics goes far in explaining why the Commissioners have difficulty in shaping policy. They speak primarily through cases. But they handle so many that they can master only a minority. Thus in the year in which the Dolcin case was decided the Commission issued 87 other cease and desist orders, approved 18 consent orders and 121 stipulations, issued 101 formal complaints, ruled upon a number of interlocutory appeals, and supervised the varied work of the staff, while individual Commissioners made speeches, testified before Congressional committees, and conferred with businessmen.

And since the tenure of an average case exceeds that of Commissioners, they often, if not usually, vote for the issuance of complaints in whose final decisions they will not participate and decide cases initiated by their predecessors. Of the five Commissioners who, on March 28, 1949, directed that injunctive action be prepared against Dolcin, only one was still on the Commission when it issued a cease and desist order on October 3, 1952. Of the five members of the Commission at the time of this second action, not one was still serving on October 29, 1956, when the Commission reaffirmed its cease and desist order after further hearings.[1]

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[1] A high rate of turnover among Commissioners is not a necessary cause of their inability to shape FTC policies. After having concluded that the FTC was an unfit instrument for any of his important policies, President Roosevelt ignored it but automatically reappointed all members as their terms expired. As a result, there was no turnover on the Commission from August 27, 1935, to October 14, 1945. Yet this was also the period in which the Commission wrote no opinions and almost automatically approved the "boiler-plate" findings and orders passed up to it from below.

The Commission thus resembles an iceberg, eight-ninths of which lies unseen beneath the surface. Commissioners came and go in the visible one-ninth, but, with some exceptions, they have relatively little effect on the remainder of the agency. Cases live out their lives beneath the surface, rising to the attention of the Commissioners only a few times. And even then, the normal action is to approve staff recommendations or decisions.

The combination of rapid turnover (which characterizes most of the independent commissions) with a plural head intensifies the difficulty of reaching decisions or of effectuating policies. One of the theoretical justifications for heading the independent regulatory agencies with boards rather than single administrators was to provide continuity and stability of policy. The following description of Commission decisions on issues raised in the Indiana Standard case illustrates the falsity

of this assumption, although this was not a typical case and was selected in part to reveal the operation of the Commission under extreme pressure.

November 26, 1940. "Having reason to believe that [Standard and other companies] have been or are violating" the Robinson-Patman Act through their grants of jobber discounts, the Commission, composed of Ferguson, March, Davis, Ayres, and Freer, directed that a complaint be issued.

October 9, 1945. The Commission, composed of Ferguson, Davis, Ayres, and Freer, issues findings, concludes that good-faith competition is not a defense for otherwise illegal price discrimination, and orders Standard to cease and desist.

August 9, 1946. After receiving protests from jobber associations, the Commission issues a modified order, Ferguson, Davis, Ayres, and Freer voting in the affirmative, and Mason dissenting to the issuance of any order.

February 11, 1949. After inundation by Congressional criticism of its basing-point and Standard decisions, the Commission tells Congress it believes good faith competition should be a full defense to a charge of illegal price discrimination, although its legal arguments before the Circuit Court have been to the contrary. Ferguson, Davis, and Ayres approve this position; Mason is absent; and there is one vacancy.

June 9, 1949. The Commission informs Congress that it cannot make up its mind whether good-faith competition should be made a complete defense by legislation.

January 5, 1950. The FTC's brief, approved by the Commission despite the Solicitor-General's refusal to argue the case, tells the Supreme Court that failure to restrict the good-faith competition defense would emasculate the Robinson-Patman Act.

January 18, 1950. Reinvigorated by new appointments, the Commission tells Congress that it opposes legislation declaring and expanding the good-faith competition defense, Ayres, Mead, and Carson approve of the statement and Mason dissents.

Early June 1950. The Commission, dividing along the same lines, advises the President to veto a bill which would establish the good-faith defense. He does.

April, 1951. After a Supreme Court decision in the Indiana case holding that good-faith competition is a complete defense under the Robinson-Patman Act, a Commission majority opposes a bill to re-affirm and expand the Court's decision. Mead, Carson, and Spingarn instead ask that the good-faith defense be legislatively limited, Ayres cannot make up his mind, and Mason supports the bill.

January 7, 1953. The Commission approves issuance of modified findings and a new order. Mead, Carson, and Springarn approving, Mason and Carretta dissenting. The findings hold that Standard's discounts were not granted in good faith, and the order includes a requirement which would either eliminate the jobbers or in effect require resale price maintenance. Only Carson wants this requirement but he refuses to support the decision unless it is included. Since his appointment is about to expire and his replacement will likely support the Mason-Carretta wing, Mead and Spingarn capitulate on this point in order to secure majority support for the findings and order. Thus resale price maintenance, wanted by only one Commissioner, is included in the order.

March 16, 1953. The Mead majority opposes a bill to reaffirm the Indiana decision and asks for legislation to reverse that decision. Carretta and Mason dissent.

June 16, 1943. The new Howrey majority (Howrey, Mason and Carretta) opposes a bill reversing the Indiana decision, Mead and Spingarn dissenting.

January 4, 1955. The Commission declines to reconsider its order. While a majority of its present membership — Howrey, Mason, Mead, Gwynne, and Secrest — would not have approved the order and findings, it followed its precedent of accepting paternity of all outstanding orders.

March 1, 1956. While its new order and findings, designed to limit the effects of the Court's Indiana decisions is being appealed in the courts, the Commission opposes a bill to reverse that decision. Mason, Gwynne, Secrest, and Anderson are the majority, while Kern dissents.

May 22, 1956. After the Circuit Court voids its new findings and order, the Commission realigns itself, with Kern, Secrest, and Anderson supporting the bill, Gwynne and Mason opposing it.

Thus turnover, personal vacillations and uncertainty, and political impotence and timidity in the face of a "hot" political issue denied the Commission continuity of position or the opportunity to contribute significantly to Congressional policy-making.

The Indiana case also illustrates a last major limit on the ability of Commissioners to influence policy. Cases, whose factual content has been structured and determined and whose issues have been selected and framed by previous years of investigation and litigation, are clumsy and often impossible tools through which to declare and effectuate new policies. Commission approval of most complaints is fairly automatic. The investigation has already shaped the case and its issues, and seldom does the Commission suggest new issues to be raised or evidence to be sought. Thereafter, the Commission can influence a case only in a judicial manner, on interlouctory appeal or on final decision, when to raise a new issue not litigated before the examiner will be to risk judicial reversal or to remand the case for further hearings. Another way of noting the intractibility of cases as means of furthering predetermined policies is to stress the problem posed by the independence of the hearing examiner, whose judge-like concept of his role reinforces his reluctance to deal with policy issues or to be unjudicially influenced by his Commission.

Crown Zellerbach illustrates some of these difficulties. In 1953 Chairman Howrey assumed office with a greater sense of the opportunity and need to make new policies than any other Commissioner in at least two decades. His letter of resignation proudly recited his policy impact and his administrative reforms.

> I feel that my job here is done. The reforms I had in mind largely have been accomplished. The Commission has been reorganized from top to bottom.... Its policies have been re-oriented to the original intent of Congress.

The President's reply gratefully acknowledged his policy and leadership contributions.

> When you assumed the Chairmanship of FTC, you brought to the office a wise and deep background of professional knowledge, clear-cut objectives for your mission, and, most important of all, a determined resolution to devote all your talent and energy in their accomplishment. The record of the FTC since you became its chairman is convincing evidence that you have served the Republic and its people well.... Your leadership, undoubtedly, will be of enduring influence in the work of all those associated with you on the Commission.

To Howrey, one of the most important needs in antitrust policy was to reduce the scope of per se rules of illegality and the substitution of a rule of reason requiring the evaluation of questioned practices of situation in the light of all the relevant economic evidence. He promoted this view in the Attorney-General's National Committee to Study the Antitrust Laws and in numerous speeches. He further argued that, as an expert body, the FTC had to gather and pay heed to economic evidence. The Commission "cannot acquire a special knowledge of competitive conditions and effects unless it examines all relevant economic factors, unless it tests public interest and competitive injury by such comparative facts as business rivalry, economic usefulness, degree of competition, degree of market control, degree of vertical integration, customer freedom of choice of goods and services, opportunities for small competitors to engage in business, costs, prices, and services."[1]

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[1] Address of June 18, 1953 (mimeographed).

He further argued that economic evidence would shorten antitrust cases by substituting concise economic data for rambling and cumulative testimony by competitors, customers, and suppliers.

Howrey found an opportunity to implement and officially declare this view in his opinion returning the Pillsbury merger case for further hearings. This attempt to establish a new policy in the preparation and decision of antitrust cases did have an effect on the case brought against Crown Zellerbach for its acquisition of St. Helens Pulp and Paper Company, a competing West Coast manufacturer of coarse papers. Previously the staff had planned to rely primarily on testimony of paper jobbers and converters about the effects of the merger. Instead, after the Pillsbury opinion it was decided to use the FTC's investigatory powers to conduct a survey showing the sources of specified classifications of coarse papers and paper products purchased by Western jobbers and converters. The survey indicated that there had been substantial competition between Crown and St. Helens and that these two firms had been among the three dominant firms in most classifications.

Crown objected to this evidence as unreliable and as hearsay, denying them the right of cross-examining those who replied to the survey. On an interlocutory appeal the Commission directed that the survey be admitted into evidence, again stressing the need for and utility of such evidence, but, to safeguard against judicial reversal, required that the underlying data, such as the completed questionnaires, be made available to Crown. Crown's counsel strove hard to discredit the survey, showing that some of its classifications were confusing or erroneous and that some of the replies appeared to be inaccurate. In his findings the hearing examiner took the safest and most legalistic

course. Fearing judicial reversal if he relied on the survey, he found against Crown but gave the survey no weight. Instead, he based his findings about market shares on some far less appropriate and probably less accurate Census data submitted by Crown. Such data is made available by the Census Bureau only with the permission of the respondent and so could not be used in most merger cases.

On review, the Commission confronted a dilemma: Should it give priority to its views about economic evidence in this, the first merger case to reach it for final decision under the 1950 amendment to Section 7, and thereby risk judicial reversal, by basing its findings on a survey deemed unreliable by its examiner? Or, since the passage of time makes effective dissolution of a merger more difficult, should it give priority to the winning of the case and its speedy termination? Understandable, it chose the latter course. Since, at the present writing, no Pillsbury decision has yet been handed down, and since that case may not permit a ruling on this issue, it is unclear when, if ever, Howrey's policy can be made effective.

Thus the evidence at hand seems to support the statements that conscious policy-making is rendered most difficult by (1) lack of FTC control over its own agenda, (2) relative failure of staff members to shape or influence the policy content and implications of cases, and (3) relative inability of Commissioners to promote policy through their case decisions.

IV SUGGESTIONS FOR RESEARCH

My bits of research are but a widow's mite offered to the cause of a better understanding of the political and administrative aspects of regulation or to that of soundly based prescriptions for the better development and promotion of public policies. And they provide but a narrow foundation for grand extrapolations. They do, however, suggest some promising courses for future research. To test and broaden the conclusion emerging from my limited studies, while these suggestions relate to the FTC, it is hardly necessary to point out obvious parallels with other regulatory programs.

It is tempting for policy-oriented observers to regard addicition to adjudication as the basic malady. Political scientists and students of public administration find themselves in a strange and unfamiliar world when they step into the domain of the Administrative Procedure Act. They tend to attribute the policy deficiencies of the independent regulatory agency to the mysterious rites whose observance is required by that Act. It is useful, however, to ask whether these deficiencies are a result of

excessive judicialization, or whether adjudicatory addiction results from a lack of policy orientation and conviction on the part of the administrators. The two answers lead to different prescriptions. The first view suggests a primary emphasis on organization and procedure, the second on the men selected as commissioners and staff and on means of increasing policy orientation, such as integration with the executive establishment and elimination of plural heads.

While the matter is in part one of a chicken-and-egg relationship, FTC experience offers some research material. The general tone of an agency, as well as its interest in policy and its ability to promote it, are not constants. Our general assumption is that an agency coasts downhill from an initial zeal and vigor. The FTC, however, perhaps unique in that World War I, hostile court decisions, and dominant Republican views of the 1920's deprived it of its youth, while the Humphrey case isolated it from the New Deal dynamo during its middle age, has in the last dozen years somewhat revived from its earlier virtual senescence.

Its recent improvements in performance need to be evaluated before final conclusions are drawn. They can be divided into the judicial and the political-administrative. Beginning under Howrey, judicial performance has been improved. Signed opinions, used infrequently or not at all before, became universal practice. And examiner's findings, which previously simply reiterated the statutory language in describing the offense and produced broad and abstract descriptions of the facts, now contain more useful and concrete descriptions. Such findings and opinions make it easier to determine just what meaning has been added to the law by each case and do enable the slow building up of more meaningful case law.

While doubting whether even a continued improvement in the performance of these judicial aspects of regulation will go far in overcoming the policy deficiencies indicated above, it would be profitable to test the performance of recent years. Thus one might focus on area where the FTC recently confronted a distinct policy problem. Enforcement of the Celler-Kefauver Anti-Merger Act of 1950 offers an illustration. Did the agency recognize the need for policy decisions and attempt to meet it, or was it too mired in the adjudication of cases which it did not select? Did it attempt to establish lines of policy, only to be frustrated by the haphazard and slow evolution of cases? Has any policy pattern emerged out of its cases? The same questions of course could be addressed to other agencies.

It is my obvious bias, however, that more hopeful conclusions may result from studies of the more informal regulatory processes of the very recent past. In many regulatory areas informal processes and decisions are far more prevalent than formal litigation. Thus a majority

of Justice Department antitrust cases end with a consent decree filed contemporaneously with the charges, clearly indicating that the real process is negotiation rather than judicial. And a majority of FTC complaints are dropped by the staff on the basis of decisions that the practice complained of is not illegal, or has been discontinued, or they are terminated by stipulations or consent orders.

These processes are important both because of their prevalence and because they represent the major way of escaping the quasi-judicial confines. Our knowledge of the general subject is disgracefully scant. We do not even know the prevelence and extent of such informal processes among the regulatory agencies. Nor do we know the answers to the questions relevant here — To what extent do these avoidances and by-passes of adjudication reflect only administrative economy — a desire to avoid the cost and effort of litigation — and to what extent are they employed by policy-minded administrators despairing of timely, claar, and consistent effectuation of policies through adjudication? The former has been the case with the FTC until very recently.

The preponderance of Robinson-Patman cases, for example, were uncontested,[1] but they yielded only boiler-plate orders.

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[1] Of the 311 cases leading to the issuance of orders, only 45 received a full trial, and another 16 underwent partial trial. The remainder led to an admission of the allegations of the complaint, a stipulation of the facts, a consent order, or a default. Edwards, p. 78.

Nor were the cases selected with policy in mind. Almost all FTC stipulations and consent orders make less of a contribution to policy development than contested cases. And as for the decisions to drop or to act upon complaints, it appears the primary consideration is the ease of winning the case rather than its importance or its policy implications, although more research is needed. Thus these escapes from the adjudicatory endurance contest do not contribute to policy.

Far more promising are the administrative and political changes begun by Chairman Earl Kintner, who has pushed the "old lady of Pennsylvania Avenue" through the most exciting year of her life. These changes encompass both formal and informal processes. The FTC has begun a number of cases on its own initiative, a few of them with some goal in mind transcending the prohibition of particular practices; monitoring and study programs have begun which may lead to greater control of its agenda; investigation procedures have been accelerated, subpoenas, for example, being used for the first time in decades; pre-trial conferences

are being used in efforts to shorten hearings, better staff are being recruited; and some present members are slowly developing a higher morale and stronger sense of mission. Of more pertinence here, the quasi-judicial strait=jacket has been loosened in a number of ways. The several successful advertising guides have enabled rules to be applied to particular trades after a few months of study and consultation and negotiation and have been more uniform, better devised, and usually more publicized than the guidelines emerging from most lengthily litigated cases. Several months of negotiations, bargaining, and a few weeks of cajoling, bullying, and persuading, reinforced with the filing of a single complaint against a recalcitrant, sufficed to produce — in an essentially political way — acceptance by the industry of far greater changes in cigarette advertising than had years of tortured adjudication.

Finally, the energetic Chairman has employed speeches and conferences as a tool of regulation, speaking far and wide building up group and public knowledge of and support for FTC policies.

While it is doubtful whether his whirlwind pace can be sustained and whether a single Commissioner can long dominate a five-man board, and while I remain pessimistic about the permanence of his re-invigoration of the agency, an analysis of the cigarette guide, for example, might shed needed light on a neglected but promising tool of regulation. And a measurement of its success is in order.

As a final suggestion, while regulatory programs vary so greatly that it is dangerous and perhaps misleading to generalize about "the" regulatory process, research projects should stress comparison and contrasts if maximum utility is to be derived. Fortunately, there are so many similar and even overlapping regulatory programs as to make this easy.

Most policy-oriented students argue that regulation by an executive agency with a single head responsible ultimately to the President will produce more and sharper policy than regulation by an independent board. Is this in fact true? We have relatively little pertinent evidence. Yet comparisons are easy to make. The Antitrust Division of the Justice Department shares responsibility with the FTC for enforcing the Celler Act. How has its program differed? Has it had a clearer sense of policy? Has it been better able to promote it? And the FDA regulates the labeling of foods, drugs, and cosmetics, whose advertising is regulated by the FTC. Has the FDA been better able to define and pursue regulatory policies?

While bearing in mind that several variables may have an impact on otherwise similar programs, many other possibilities readily leap to mind, such as comparison of regulatory programs with those which are similar but combined with promotional powers, or similar programs which differ in the nature of the political constituency.

In the absence of such research into a number of different agencies and programs, we are equipped with but assumptions and unverified hypotheses for our battles with the ABA over the revision of regulatory programs, organization, and procedures. Nor can policy-minded critics of present programs be sure whether the primary weakness of the independent commissions lies in their isolation from the executive, their quasi-judical procedures, the quality of their personnel and leadership, their plural heads, or the inherent technical and political difficulties of their assignments.

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DEMOCRATIC ONE-PARTY SYSTEMS: THE MEXICAN CASE

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler Hilton Hotel

September 8-10, 1960

DEMOCRATIC ONE-PARTY SYSTEMS: THE MEXICAN CASE

The early years of this century saw four great social upheavals--in Russia, in China, in Turkey, and in Mexico--that fall properly in the category of revolutions. Today we are witness to processes of social change potentially not less profound than these and no less rapid, at work in societies almost everywhere in the peripheral world. A question that concerns us all and to which we should dearly like a trustworthy answer is, what does the future hold for these changing societies? Are they to emerge on the far side of their revolutionary experiences comparatively open and democratic, societies with which we of the west can establish decently cordial and cooperative relations; or are they to emerge canted strongly toward totalitarianism?*

In the nature of the case, unfortunately, no trustworthy answer is to be found, partly because we cannot know beforehand how events and forces external to these societies will impinge upon them and affect developments within them, but also because a revolutionary situation, precisely to the extent that it is revolutionary, is one in which established patterns of social interaction are disrupted, in which many traditional goals and values are brought under critical review, in which the thread of continuity that links past with present and present with future is, if not broken, at least sharply altered. We cannot know the forms to be taken by the new patterns of interaction or the nature of post-revolutionary values, since both patterns and values will be resultants of an unpredictable interplay of a large number of factors of which the most important will be individual human actors with differing environments, interests, values, responses, implements, and wills.

But if we cannot know what the future holds for these societies, at least we can take some consolation from the facts that revolutions do burn themselves out in time and that the social systems that emerge may very well be systems with which we can live comfortably. If history is at all a safe guide--it may not be in mid-twentieth century--we can console ourselves in the recognition that two of the four major revolutions of the early part of this century, the Turkish and the Mexican, gave issue to political systems that

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*These are only two of a number of possible alternative futures. For example, some of these societies may not survive as independent entities, but may break up into a number of smaller independent units. Others may survive, but only as political sub-systems of an overarching political system centered on Moscow or Peking.

conform in gross form to the accepted criteria of western democracy and that appear to be moving toward even greater conformability.

This paper directs itself to the Mexican Revolution and to the extraordinary political system that has developed out of it. For the most part, politically articulate Mexicans, conscious that they have arrived at their peculiar system less by design than by accident and sheer serendipity, seem to look at it with a mixture of perverse pride and bewilderment. It is clearly theirs, clearly Mexican, bone of their bone; clearly it works, having permitted the people of Mexico to enjoy much of both political democracy and political stability, and at the same time to get on with the business of substantial economic growth and significant social reform. And yet its institutional structure is a patchwork creation, the product of much ad hoc and opportunistic tinkering; the gap between constitutional prescription and actual political practice is very wide; the distance still to be traversed for the attainment of early announced revolutionary goals is tremendously great, those goals now appearing almost impossibly remote; the system still lacks, after fifty years, an agreed upon body of supporting political myth. Small wonder that the Mexicans insist that their system is sui generis and not for export.

Evidently, it will be impossible for us to give here an exhaustive description of the Mexican political system, or a detailed history of Mexico from 1910 to the present.* We shall limit ourselves, therefore, to the consideration of three general questions: (1) What is the structure of the Mexican system? (2) Who participates in the Mexican system and how does he participate? (3) How "efficient" is the Mexican system, both as an instrument of social order, and as a device for the attainment of Mexico's revolutionary goals?

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Many years ago, in 1916, the Mexican anthropologist Manuel Gamio prepared an insightful little volume entitled Forjando Patria.** Although the book is well worth reading today, the most significant thing about it for our purposes is its title: forjando patria, forging the Mexican fatherland.

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*An excellent description and analysis of the Mexican political system is that of Professor Robert Scott. Mexican Government in Transition, 1959. Howard Cline's The United States and Mexico, 1953, is recommended as among the very best of a number of good historical introductions to Mexico.

**Mexico: Porrúa, 1916.

building a Mexican nation in which all those permanently resident within the territorial frontiers of the Mexican state would effectively participate. To the extent that the Mexican Revolution can be said to have had a single, all-embracing objective, this was that objective.

Gamio brought together this collection of essays at a time when the revolution was in deep crisis and when Mexican society itself was at the edge of disintegration. His was a strongly voiced appeal that urged all Mexicans who would listen to use the opportunity the revolution had created for them. Now, when the old order was in collapse, was the time to launch major and concerted efforts in all areas of Mexican life. From Gamio's point of view, of course, the principal challenge lay in Mexico's great masses of unincorporated Indians and mestizos, and he advocated, as expected, a mammoth attack on illiteracy and other barriers to social mobility. But he was not narrowly an indigenista. He wanted to see also the development of an integrated and articulated national economy to take the place of Mexico's many unrelated or uncoordinated parochial economies, and to reduce the role of foreign economic interests in Mexican affairs. He wanted to promote the rise of a distinctively Mexican national culture based upon Mexican motifs, and to reduce the propensity of Mexico's cultural leaders toward indiscriminate mimesis of North American and European models. He wanted to see the transformation of Mexico's political system from one that, at the national as well as at subordinate levels, had been traditionally the creature of a quite reduced minority to one that would adequately represent and respond to all sectors of Mexican society.

No one can measure the impact of Gamio's book upon informed Mexican opinion, nor is it important to try to do so. What is important to note is that the kind of thinking put forward by Gamio was reflected in the Querétaro Constitution, drafted and signed in the following year.

What part is played by the Querétaro Constitution in the Mexican system? The constitution does at least three analytically distinguishable things. First, it provides for the formal and "flawless" structure of the system. In it are set out, under standard rubrics, the territorial divisions of the Mexican state and the functional divisions of power. Second, the constitution lays down a series of procedural and normative ground rules within whose terms the on-going process of political and governmental decision-making is expected to be carried on. Third, the constitution embodies many of the presumed long-term goals of the revolution as these were conceived by the constitution's drafters. One need look only at Articles 3 (on education,) 27 (on the ownership and use of real property,) and 123 (on the rights of labor), to become aware that these Articles refer not to an existing, but to a hoped for, Mexican state of affairs.

The first two categories of provisions the Querétaro Constitution shares with all other western constitutions. The presence in the constitution of the third category has been the source of much confusion and disillusionment among both Mexicans and foreigners, particularly because in the constitution as it is put together--it was drafted in great haste--no criteria are given that make it easily evident which articles are to be regarded as immediately applicable and enjoinable, and which are anticipatory in nature. Some Mexicans and foreigners who note, as they are bound to do, the many instances of gross discrepancy between constitutional prescription and actual practice, are therefore prompted to dismiss the Querétaro Constitution, or much of it, as an essay in hypocrisy, a sterile exercise in legal draftsmanship.

Presumably all the provisions of the constitution share the denomination of fundamental law and consequently are operative. But one must distinguish, in the Mexican context, between provisions of the first and second categories on the one hand, and provisions of the third category on the other. Article 49 reads, in part: "The supreme power of the Federation is divided for its exercise into the legislative, the executive, and the judicial."* Article 103 reads, in part: "Tribunals of the Federation shall have jurisdiction over . . . all controversies of civil or criminal nature that arise from the fulfillment and application of federal laws. . . ."

Those provisions differ radically from such as the following: "Primary education shall be obligatory."** "The population settlements that lack ejidos . . . shall be granted lands, forests, and waters sufficient to constitute ejidos in proportion to the needs of their population. . . ."*** "In all agricultural, industrial, or mining business or in any other kind of enterprise, employers shall be obliged to furnish workingmen comfortable and hygienic living quarters. . . . They also must establish schools, hospitals, and any other service necessary to the community."

The Querétaro Constitution, in sum, is designed ostensibly to be both an instrument that is to regulate the adjustment of rival claims within Mexican society and an instrument that is to help bring about exorient changes of Mexican society

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*The translation is that which appears in The Constitutions of the Americas, Russell H. Fitzgibbon, ed., 1948.

**Even today more than 40 per cent of those in Mexico are illiterate, 43 years after the adoption of the constitution.

***This provision is very far from having been carried out, the ejido program having been assigned a low priority during most years since the constitution's adoption.

taken as a whole. On its face, the constitution is both an element of stability and an element of profound social change.

Adoption of a constitution of this kind carries with it the possibility of four different kinds of responses on the part of political actors presumably responsible for its implementation. In one case, such actors, recognizing that many of the constitution's provisions are essentially hortatory rather than immediately applicable, may tend largely to ignore the hortatory provisions and in the process of ignoring them to ignore also other provisions that may be presently enforceable. In a second case, those charged with political responsibilities under the constitution may assign such high priority to the hortatory, the ideal, provisions that they tend to disregard the structural and regulatory, the normative, provisions when the latter appear to stand in the way of rapid attainment of the goals set forth in the former. In a third case, political actors may largely ignore the hortatory provisions while adhering fairly scrupulously to the structural and regulatory ones.

The fourth alternative, strict adherence to the structural and procedural provisions coupled with appropriate dedication to the realization of the hortatory provisions, imposes an almost intolerable strain on political actors, since they are expected to perform two different roles that are not easily or automatically compatible. They are expected at once to be agents committed to institutionalization, due process, political stability, and to be agents committed to a revolutionary transformation of their society.

If one examines Mexican history during recent decades, one finds Mexican leaders who have adopted all except the second of these approaches to the constitution. Carranza, the first president to govern under the aegis of this document, took neither the hortatory nor the regulative provisions very seriously; and his successors Obregón and Calles, while less cynical than he, were not disposed to let the constitution in any of its aspects seriously hinder them in their manipulation of the levers of political control. The four most recent Mexican presidents--Ávila Camacho, Alemán, Ruiz Cortines, and López Mateos--appear to have paid comparatively little heed to the hortatory provisions but have tried, with varying degrees of sincerity and success, to run Mexican affairs in accordance with the constitution's procedural norms. Cárdenas, alone among Mexican presidents in my judgment, attempted conscientiously to follow the fourth alternative namely, to adhere to the procedural norms of the constitution and at the same time to press forward with determination toward the achievement of Mexico's announced revolutionary goals.

It is a point particularly worth noting that no important Mexican leader has thus far adopted the second approach.

That is to say, no Mexican charged with major political and governmental responsibilities has tried to facilitate the achievement of Mexico's revolutionary goals as announced in the Querétaro Constitution and elsewhere through a crash program of Gleichschaltung along totalitarian or quasi-totalitarian lines. Nor has any recent Mexican leader engaged in the systematic and thorough stifling of the expression of opposition that has been characteristic not only of totalitarian leaders but also of some leaders of the newer states of Africa and Asia and present-day Cuba. Leaders of states in this latter category may insist that their function is to prepare their societies for the practice of constitutional democracy, but that such practice is impossible in other than a spurious sense until value consensus has been achieved. This value consensus, in turn, cannot be attained without the carrying through, in ruthless fashion if necessary, of the social and economic transformation of the society. The end, the establishment of value consensus on new social and economic foundations, is taken to justify the interim employment of many unconstitutional and undemocratic means. Why Mexico has been spared such Jacobinism is a question that deserves some attention.

Several parts of a possible explanation suggest themselves. One, perhaps, is the constitution itself. Structurally, the government established by the Querétaro Constitution resembles very closely the government provided for in the Mexican constitution of 1857, a document heavily derivative from the constitution of the United States. Moreover, the goals of the revolution as set forth in the constitution are couched largely in terms that take as their referent the autonomous person, and his rights, duties, and values. The reader is referred to Titles I and VI.* But while the written provisions of the constitution may have served moderately to brake the pretensions of some political actors in Mexico, they can be taken to provide only a very small part of the explanation we seek. Other factors are clearly of greater importance. I should like to consider five of them.

First, even with today's instruments, Mexican society is hard to govern in a positive fashion from the center. The exercise of a naked political power, of course, no longer presents grave problems. Mexico's difficult terrain and vast extension are not insuperable obstacles to the deployment of military forces. But Jacobinism demands more of a state's population than sullen acquiescence; it demands active participation and, ideally, enthusiastic cooperation on the part of all, or at least of a substantial majority, in the pursuit of specified national goals set out by the leadership. Given the nature of Mexico's population distribution,

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*The constitution is not consistently individualistic in tenor; in fact, some parts of it are strongly collectivist in tone.

given the great ethnic and cultural diversity of that population, and given the limited economic and technical resources available to Mexico's leading political actors, the knitting together of Mexican society into one tightly coordinated social body by conscious and systematic effort on the part of a central leadership seems, on the face of it, to be impossible. During the revolution's militant phase--which ended in 1940 with the accession to presidential office of Avila Camacho--the difficulties of such an undertaking were even greater than they are today. Part of the explanation for the relative lack of Jacobinism in the Mexican experience, therefore, would appear to lie in the sheer technical impracticality of it.

Second, Jacobinism requires a closed ideology, at least in the sense that the leadership must feel that it is in possession of a package of incontrovertible truths and that its enemies are not only in error but are evil. No such ideological package emerged during the Mexican Revolution, which got off to a decidedly non-ideological start with the extraordinarily bland slogan, "Effective Suffrage, No Re-election."* To the extent that the revolution had an ideology, it was an open one. The broad goals were posited, but it was early recognized that the distance to the Mexican paradise was very great, that the territory to be covered had not been properly surveyed, and that the adoption of a pragmatic, experimentalist approach to the business was the appropriate one.** Cárdenas, who unquestionably did more than any other Mexican president to advance Mexican society toward the realization of the revolution's goals, thought to establish "socialism" as the dominant political credo, but he was both much too democratic and much too astute a politician to insist upon doctrinal purity among his followers or to push for a consistent "socialist" program for Mexico.

Third, the power base of the Mexican system, at least since 1920, has been functionally diverse. Among those groups that took a hand in the drafting of the Querétaro Constitution of 1917 were representatives of Mexico's armed forces, labor unions, agrarian interests, and professional groups. These elements came together in an uneasy alliance for the purpose of putting an end to the anarchy that had plagued Mexican society during the preceding seven years. But theirs was an alliance, not a melding of forces in an integrated power bloc.

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*Emiliano Zapata and his followers had a different slogan, "Land and Liberty!" But they were not ideologues.

**Mexicans today are fond of pointing out that their revolution began seven years before Lenin detrained at the Finland Station, and the non-ideological character of their revolution is now a matter of considerable pride to them--or to most of them. Most Mexicans will insist that Mexican society is immune to the totalitarian virus.

over the decades the composition of the alliance has changed and the balance of forces within it has shifted; but it remains fundamentally an alliance of functionally distinct interest groups, each jealous of its prerogatives. Jacobinism requires, for its successful implementation, a much tighter control apparatus and a much more easily manipulated power base than those of the Mexican system.

Fourth, it is at least possible, and it has been suggested, that Mexico since 1910, as before that date, has been victimized by a deplorably large number of cynical and opportunistic individuals who have sought positions of political power not primarily for the purpose of helping Mexican society attain revolutionary goals but rather for the purpose of personal plunder and profit. Certainly much historical evidence is available to support this contention. And it is clear that Jacobinism does not flourish among men of this type, Jacobinism demanding much too much in the way of dedication and hard work.

But while admitting that cynicism and opportunism have been important factors in preserving Mexico from Jacobinism, I think it important to introduce a fifth consideration that I believe goes some way toward mitigating the charge, so often made, that the revolution has been "betrayed" by a pack of self-seekers. It is that Mexico's political leadership seems to have an almost visceral awareness of man's fallibility, including the fallibility of the leadership itself. That there may have been some leaders and would-be leaders who felt supremely self-confident and in possession of the only key to the solution of Mexico's problems does not detract materially from the force of this assertion, since leaders need lieutenants, and the lieutenants of Mexico's leaders in general have not been prone to ascribe omniscience or infallibility to them. The Mexicans, of course, have had some very capable leadership, and they have had, in Cárdenas, at least one leader of truly outstanding qualities by all relevant standards. But it happens simply to be the case that Mexico's revolutionary and post-revolutionary experience has not yet cast up a leader with the pretensions of a Hitler or a Mussolini, a Khrushchev, or even a Nasser, a Nkrumah, or a Castro. Nor have the Mexicans been obliged to endure the indignity of a Perón.

How is this fact to be explained? I doubt that it can be explained in a manner altogether satisfying to the political scientist. Mexico's history probably can be introduced to account for it in part. Mexico, after all, has been an independent republic for almost a century and a half, and its nineteenth century history is dotted with disasters and near-disasters at the hands of those who claimed to be its deliverers. I suspect, though, that something less susceptible to analysis lies beneath the Mexican distrust of panaceas and Jacobinism.

Mexicans and others well acquainted with Mexico have frequently remarked a kind of fatalism, a kind of acute consciousness that man is only precariously situated on this earth, that there are many forces at work around him, some benign, some evil, to which he can adjust but over which he can exercise little direct control. This is something that goes well beyond Burke, something that goes beyond the French _mesure_. It is akin to the notion expressed by Robert Burns when speaking of man's best-laid plans and how they "gang aft agley."

However this awareness of human fallibility be construed or explained, it exists; and it has had the consequence of impeding the development of a closed system grounding upon a single fully comprehensive and internally consistent ideology. To be sure, the broad goals of the revolution were quite early set out, as we have seen; but these goals are now in the public domain, and the Mexicans as a society have refused to take seriously the claims of any self-appointed caste of high priests to exclusive knowledge of what these goals "really" mean and of the "true" road to their attainment.

We can acknowledge brutality, fraud, and arbitrariness in the operation of the Mexican system. But these appear as nothing, or next to it, when compared with the brutality, fraud and arbitrariness of those ideologically "consistent" and "coherent" regimes in which deviation from officially sanctioned patterns of thought and action is regarded as crime or heresy. There is abundant room in the Mexican system today for "deviant" thought and behavior. It can be persuasively maintained, indeed, that there are very few other societies in the contemporary world in which the expression of dissident belief brings down on one's head less in the way of negative social and political reactions.*

The absence of fascism is one thing; the presence of effective political democracy is quite another. Is the Mexican system properly to be labelled "effectively democratic"?

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*". . . There are two completely positive factors to be noted. . . . respect for human life and freedom of thought. At this moment, we can say with satisfaction, there are no political prisoners in any part of the national territory; everyone can express his ideas, whatever they may be, without danger; one can attack the government, one can even attack the President, anywhere; one can write against the authorities; nothing will happen to the writer, the orator, the agitator." Jesus Silva Herzog, "Un mensaje sobre la revolucion mejicana," in Benjamin Keen, ed., _Readings in Latin American Civilization_, 1955, as cited in Lewis Hanke, _Mexico and the Caribbean_, 1959, p. 81.

This is a question not infrequently asked and variously answered, depending upon the character and stringency of the taxonomic categories employed. I am not convinced that the question is a particularly useful one, and I hope to avoid a direct confrontation with it, choosing to come at it obliquely through an examination of the Mexican system today in its structural and functional aspects. Following Professor Scott, I shall focus upon Mexico's two most important political institutions, the dominant party and the presidential office.*

The Institutional Revolutionary Party, the PRI, provides the principal mechanism through which incorporated Mexicans gain access to and participate in their society's political process.** The present structure of the party, as represented diagrammatically, is extremely complex.*** We shall not deal exhaustively with the structure here, that having been done admirably by other writers. One point, however, must be of special interest to us, and that is that the party machinery operates primarily on a <u>functional</u> rather than a territorial basis. If we look, for example, at the most important executive agency of the PRI, the Central Executive Committee, we find its seven members include a President and Secretary General, a national Senator and a national Deputy, and a representative from each of the three Sector Organizations, Labor, Agriculture, and "Popular." If we look at what is ostensibly the "supreme organ of the party," the National Assembly, we find that this triennial convocation comprises roughly a thousand delegates drawn in equal numbers from each of the three Sectors. And we find this functional emphasis reappearing at both state and local levels of party organization. Moreover, membership in the party is acquired by individuals through their affiliation with a functionally defined group that is formally associated with one of the three Sectors.

The groups that are associated with one or another of the three Sectors are diverse, an almost full range of occupational

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*Robert E. Scott, <u>op. cit.</u>, Ch. 5-8.

**<u>Partido Revolucionario Institucional</u>, variously translated. The two qualifiers in the party's name are indicative of the ambiguous character of Mexico's ideological commitment, since they are intrinsically incompatible. That is, to the extent that the party is "revolutionary" it can hardly be "institutional." The name, of course, reflects the effort of the party's leaders to have the best of both worlds.

***Professor Scott has diagrammed this structure in his <u>Mexican Government in Transition</u>, p. 158. The reader is referred to his book for an excellent discussion of the matters treated here.

categories being represented among them. They include a great many of Mexico's labor unions, organizations of government employees, professional associations, farm owners' federations, and so forth. There are, in addition, some groups whose identity derives from criteria other than function, as for example youth and women's organizations. Indeed, one associated category is called simply "Diversified Persons," which, in the words of Professor Scott, denotes, "a catchall for all kinds of otherwise unaffiliated Mexicans."* The PRI manages, therefore, to embrace within its membership persons from very nearly all segments of Mexican national life.

Not all Mexicans, of course, are members of the PRI, not even all incorporated Mexicans. But recruitment into the party is open, the only requirement being identification with an appropriate and recognized group; and within each of the three broad sector organizations are represented groups that reflect a very broad spectrum of political and economic belief.

Michels' "Law of Oligarchy" operates in the PRI, as it does in any elaborate organization, and there is no doubt that effective control of the levers of national party action is in the hands of a very few men. But it is worth taking a moment to explore the way individuals at various levels participate in the party's decision-making process. To begin at the periphery of the party, most individuals who are members of the PRI are not politically active in it, their participation in its activities being confined to the routine approval of decisions taken by the leadership of their local association and the routine casting of a ballot in favor of the PRI ticket in elections.**

Of those who are politically active in the PRI, most are so only at the local level, within their functional association. Some, however, will move up to the state, or even the national, organizational levels of their functional association and will play roles in the decision-making process at those levels; while others will identify themselves directly with the executive apparatus of the party in either a municipal or a regional capacity. Those who work within their functional associations--their unions or their professional organizations--at the national level play a part in the PRI decision-making process by bringing their points of view directly to the attention of the Central Executive Committee

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*Robert E. Scott, op. cit., p. 167.

**Not all members of the PRI vote for the party list. Many individuals are included automatically on the party rolls because of their group affiliation. Of these, some will vote *against* the party's list, others will not vote at all.

and also by discussion and debate with representatives of other functional associations that are affiliated with the same broad Sector Organization.

In the nature of the case, the Central Executive Committee can, with respect to a specific issue, take only one specific decision; and it is inevitable that in an organization that pretends to represent a collectivity as broad and heterogeneous as the party membership of the PRI, the decision that is taken must appear "arbitrary" and "undemocratic" to many in the membership.* But one is inclined to believe that, by-and-large, and increasingly in recent years, the Central Executive Committee, in reaching the decisions it does, is receptive to expressions of opinion from all concerned sources and tries to avoid arbitrariness. Once, however, the Central Executive Committee has taken a position, it is capable of enforcing it, for it has a variety of sanctions both positive and negative at its disposal. Chief among these are patronage and expulsion.

At this stage, it becomes important to know how the Central Executive Committee itself is selected. Actually, the process is not unlike that employed in a number of western constitutional democracies. The President and the Secretary General are elected by the National Assembly, although in effect the National Assembly merely ratifies the choices of the President of the republic. The three Sectoral representatives are designated, after bargaining, by the respective national Sector organs, while the Senator and the Deputy are chosen by legislative caucus.

How did the PRI acquire and how does it retain its position of political dominance in the Mexican system? It must be emphasized that the PRI is not an "official" party in the statutory sense. There is no mention of it in the Constitution, nor is it singled out specifically for preferential treatment in the electoral laws of the republic. Other parties exist in Mexico, regularly present programs and candidates to the Mexican electorate, and occasionally gain representation in the legislature. Clearly, minor parties operate under some serious handicaps, but the handicaps are not insurmountable legal ones. Oversight of the electoral process is entrusted to the executive branch of the Mexican government, which, of course, is firmly in the hands of the PRI; but there is no evidence to support the view, sometimes advanced by disgruntled opposition candidates, that the grip the PRI has on Mexico's political process owes wholly, or even largely, to fraud and violence. The explanation of PRI success must be sought elsewhere.

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*This is to say nothing of the way such a decision must appear to those Mexican groups and individuals who are overtly in opposition to the PRI.

First, the PRI is put forward by its leadership, and is regarded by most politically engaged Mexicans, as the heir of the Revolution. It was the first broadly national party to appear in post-Cuentitaro Mexico, and under its aegis has been implemented--to the extent that it has been implemented--the revolutionary program.

Second, the PRI is broadly representative and pragmatic in its approach to Mexican problems. It is forced to be, as we must recall after our brief examination of its structure. No other Mexican party can make, or can even seriously pretend to make, an effective appeal to such a diversified electorate. Most other Mexican parties are either highly personalistic, highly ideological, or directed to a narrow interest.* Therefore, even if those who control the fortunes of the PRI and the republic's electoral machinery were to lean over backward to be scrupulously fair in the electoral contest--which, admittedly, they seldom do--no minority party could prevail against the PRI.

Fourth, the PRI has shown an exceptional receptivity to the ideas and programs of opposition parties and groups and has incorporated into its own platforms whatever it felt desirable or expedient from the opposition.

Fifth, the tradition of PRI electoral success is now so firmly established in Mexico that it is inconceivable to most in the society that any other party could supplant it. Most Mexicans who vote, vote for the PRI as a matter of course.

Sixth, the PRI has been successful in another sense. In the years since its founding by Calles in 1929, mechanisms for the peaceful and institutionalized transfer of power from administration to administration have been established, and political stability and predictability have been relatively assured. Most Mexicans feel no strong desire to change a system that has served them so well, at least in comparison with what Mexicans knew in earlier periods.

Among the roles played by the PRI in the Mexican system, none is more critical than the one it plays in determining who will occupy the presidential office. Nomination and presentation of presidential candidates to the electorate is a function of political parties elsewhere, but in the Mexican context this function takes on particular significance, first, because nomination by the PRI is tantamount to election, and second, because the Mexican president is unquestionably the most important political actor in the system.

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*The single and relatively exception is the PAN, the Party of National Action.

Formally, the nomination of the presidential candidate is accomplished at a special conference of the PRI; actually, however, it is done by the outgoing president and other top leaders of the party. But this must not be taken to mean that the selection of the candidate is made arbitrarily. Bearing in mind the diversified range of groups represented in the makeup of the PRI, we can appreciate that the problem of "availability" looms as large for the Mexican president-makers as it does for their North American counterparts. To quote Professor Scott again, ". . . The acceptable candidate must satisfy as many and alienate as few as possible of the principal interests participating in the revolutionary coalition, no little accomplishment considering the wide range of viewpoints involved."*

The President of Mexico derives his great power from his dual position as chief of the dominant party and head of the Mexican government. In both of these roles he has, apparently, much freedom of action, there being no other officers in either hierarchy who have available to them even remotely comparable means for making and enforcing decisions, and there being no strong institutional devices that can hold the President strictly accountable for his decisions and acts. It is true that the top leadership of the PRI "takes" the President in the sense of seeing to his nomination and election; but once the President takes over direction of the executive and administrative apparatus of the Mexican state, he is able effectively to resist party efforts to dominate him. Moreover, because of historical tradition, constitutional provision, and a widespread recognition in Mexico of the need for strong presidential leadership, the President overshadows members of the legislature and judiciary, just as the executive branch overshadows the legislative and judicial branches of Mexican government.

But this appearance of executive omnipotence, which so enthralls some commentators,** is in important respects quite misleading. While it must be recognized that the President does indeed have extensive power, it must also be recognized that the President is not an abstraction, but is a concrete individual who has been selected by the party precisely because he is believed to be a man who will not act in such a way as to destroy the coalition of forces upon which party strength depends. This means, under present conditions, that the President almost necessarily must be a moderate, both in the sphere of belief and in the sphere of action. It means, also, that the President presumably will be a man disposed to use all available channels for the

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*Op. cit., p. 304.

**Professor Frank Tannenbaum of Columbia University is perhaps the best known of these.

gathering of information and opinion upon which to base his executive decisions and his proposals for legislative enactment. He must also keep in mind that the office of the Presidency now caps an impressively large and bureaucratized administrative apparatus, with its own bureaucratic inertia and routinized patterns, which works to restrict the President's area of effective freedom of action.

In fact, recent Presidents have developed means of tapping sources of opinion that lie well outside the party-government structure. Associations of manufacturers and merchants, for example, which are not affiliated with the PRI, are urged to submit proposals and criticisms to the presidential office; deputies from opposition parties are given full freedom to state their positions in legislative councils; the press, as free as any in the hemisphere, is assiduously followed by those who staff the executive office, for the purpose of evaluating trends of opinion and areas of concern.

I should conclude, then, that the Mexican political system, for all of its "one-party" character, has evolved to the point where such terms as "representative," "responsible" and "responsive" are properly to be applied to it.

We can conclude this paper with a brief consideration of the Mexican system in terms of its "effectiveness." I think the system has abundantly demonstrated its "effectiveness" in the matter of assessing, adjusting, and accommodating rival claims within Mexican society. Positive political stability has been assured, political patterns have been institutionalized to a degree that makes possible long-range planning, the Mexican system is becoming more and more one of law, less and less one of men.

But how "effective" has the Mexican system proved to be in the attainment of the early announced revolutionary goals? One who visits Mexico today, half a century after the Revolution began, will find mass illiteracy, appalling poverty, and a large part of the Mexican population still not effectively incorporated into Mexican national life. One may conclude, therefore, that the system has not met the requirements of Mexican society.

Before accepting that judgment, however, let us take account of three things. First, Mexican society did indeed pass through a revolution, and the system that has developed out of that revolution does serve effectively to meet the requirements of sectors of Mexican society that hardly existed in pre-revolutionary Mexico, namely, those which we would characterize imprecisely as middle-class elements. The system, it is true, has not worked markedly to improve the condition of Mexico's Indians and depressed <u>mestizos</u>, but it has helped literally millions of others.

Second, the question must be asked very soberly whether the early announced aims of the Revolution were realistic, given Mexico's resource endowment, and population composition, distribution, and rate of growth. I am not convinced that they were realistic, I am not convinced that they are realistic even today; and I am not certain that a determined effort to move speedily toward them would not result in calamity.

Third, it seems probable that a stable, institutionalized system that is open--which Mexico's system approximates--is, in the last analysis, the kind of system most likely to give rise to the healthy national community that Mexico's revolutionary spokesman envisaged.

Private and Public Diplomacy

by

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On January 19, 1959, during Mr. Mikoyan's visit to the United States, Former President Harry S. Truman published a signed article in the New York Times attacking the pretensions of amateur diplomats.

> "I hope," he said, "that the recent crop of diplomatic tourists does not get us into more complications at a time when the free world is trying to find how to deal with the Communist world.
>
> "Those of our own people --whether they travel to Moscow or whether they have been hosts to Anastas I. Mikoyan in this country -- must understand that they have no responsibility for the shaping of American foreign policy.
>
> ...."Diplomacy by press interviews, special audiences or fishing expeditions can only compound an already complicated situation.
>
> "The first thing these people must understand is that, under our Constitution, there is only one place where foreign policy is made, and that is in the White House....
>
> ...."Until the President of the United States decides what our foreign policy is and says what it is and stays with it, any statements or declarations made by diplomatic tourists serve no useful purpose....
>
> "I would caution some of our well-meaning, self-appointed, self-assumed peacemakers to be careful lest they forget, in their ardor, that the President makes foreign policy and they

may inadvertently lend themselves to the propaganda purposes of our adversaries.

...."Any suggestions of division among ourselves at this time on the aims of our foreign policy can only serve the Communist propagandists.

"I have always favored tourist exhanges between our two opposing systems in the broadest possible manner. We should encourage teachers, students, artists, farmers, businessmen, financiers, industrialists, members of government and other representative officials and groups to visit the Soviet Union and to receive similar groups coming to us from the Soviet.

"I am glad, therefore, that so many of our businessmen, writers, journalists, and political leaders have traveled to the Soviet Union and were accorded important interviews there. Any new information that came out of those interviews was certainly a net gain.

"But I do feel that in some instances interviews by those who are not journalists have lent themselves unwittingly to maneuvers of the Kremlin to appeal to our people over the heads of the Government"

It is my thesis that this view, stated so forcefully by Harry Truman and generally shared by professional diplomats, is entirely wrong for our kind of society in our era.

1. Such monopolization of diplomacy is unfeasible in a pluralistic society in an age of rapid communication.

2. Such monopolistic diplomatic expression would convey dangerously misleading messages to others.

3. Such monopolization of expression would deprive the United States of effective weapons in its diplomatic arsenal.

4. And finally, such restriction on who participates in diplomatic roles would seriously weaking public support in the United States for foreign policy.

1. The Capacity for Strategy of a Pluralistic Society.

It must be conceded that the law on the face of it seems to be on Mr. Truman's side. Title 18, Ch. 45, sec. 953 of the United States Code (1958 ed.) says:

> "Any citizen of the United States, wherever he may be, who, without authority of the United States directly o r indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, with intent to influence the measures or conduct of any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined not more than $5000 or imprisoned not more than three years or both."

That is the so-called Logan Act passed in 1799. George Logan was a Philadelphia Quaker. In 1798 after the three American envoys had left the French republic and diplomatic relations had been severed, after Washington had been recalled to command the Army and the XYZ correspondence revealed, Logan left for France on a mission of peace carrying a letter of introduction from Thomas Jefferson. He returned, having met Tallyrand, with word of the French desire to renew amicable relations. The Federalists were furious and denounced him as the treasonable envoy of a faction who had undertaken diplomacy with an alien power. They passed the act which still bears his name.

But the history of this law is one of unenforceability. No person has ever been indicted under the Logan Act, nor has an indictment

ever been asked by the Justice Department. So the Courts have never had occasion to rule upon it. Today the Supreme Court would presumably find the act unconstitutional under the first amendment, at least as applied to such facts as those in the Logan case. This law is to all intents and purposes a nullity.

While no one has been indicted the law has not been entirely forgotten. It has been used repeatedly to excoriate American travellers who had expressed unpopular views while abroad. Most often the demand for prosecution of someone under the Logan Act has been made in the halls of the Congress, though on one occassion in the late '90's a member of the Foreign Affairs committee in the Congress was warned in a State Department statement to the press that he was liable to prosecution for some criticisms he had made of the position the Secretary had taken in some negotiations with Mexico on conflict of laws.* The first episode under the Act occurred when the Spanish Minister to the United States retained five leading American lawyers to give an opinion on certain private claims our State Department was pressing against Spain. Their opinion was in favor of the Spanish position and a Congressional committee demanded their prosecution.

After the First World War former president Taft and other leaders of the League to Enforce Peace such as Edward A. Filene

*Lindell T. Bates, Unauthorized Diplomatic Intercourse by American Citizens with Foreign Powers, New York, privately printed, 1915.

were accused of violating the Logan Act by conversations and correspondence with leaders of European governments favoring our joining the League, and so was Senator Borah for use of the Foreign Relations Committee for communicating with the President of Mexico.* In 1933 William Bullitt was accused of violating the law by conversations concerning war debts in European capitals assertedly on behalf of President-elect Roosevelt. In 1947 demand was made in the House Un-American Activities Committee that Henry Wallace be prosecuted for criticizing the Truman doctrine while travelling in Europe. In the same year Leo Szilard drafted an open letter to Joseph Stalin urging a summit conference and sought to clear it with the United States government. The Attorney General refused permission on grounds of violation of the Logan Act.** The most recent case was after the U-2 incident. Cyrus Eaton, the millionaire sponsor of the Pugwash conferences expressed his apologies to Khrushchev. Senator Dodd (Dem., Conn.) accused him of breaking the law.

This series of cases makes evident the difficulties a free society would face in trying to draw a line between unauthorized diplomatic negotiation and the ordinary practices of free espression at home and abroad. The only thing which differentiates

*Hope Lelsey, "Unauthorized Diplomatic Intercourse by American Citizens with Foreign Powers," Cumulative Digest of International Law and Relations, American University, Washington, D.C., Vol. 3, No. 12, 13, 14, Febr. 25, 1933.

*Elmer Plischke, Conduct of American Diplomacy, New York, 1950, pp. 64-68.

the instances listed from thousands of other episodes of intercourse between American citizens and the world was the intensity of controversy and feeling around the listed events. Indeed if those were violations of the Logan Act then foreign correspondents, foundation executives, and resident managers of American firms abroad violate the Act every day.

There were, according to Harlan Cleveland, Gerald Magnone and John Adams, over 1½ million Americans living overseas in a typical non-summer month last year.* Of these, half a million were in civilian households. Among them were over 100,000 employed abroad by substantial American organizations --

33,000 by government

30,000 missionaries

25,000 businessmen

To these residents abroad must be added perhaps 10,000 students and teachers,** a small number of self-supporting or free lancing expatriates, a few thousand employed by international agencies, and many thousands of

> "...individual Americans overseas engaged in contract work for foreign governments or foreign companies, or running their own offices as consultants or lawyers or public relations men, or merely drifting around picking up odd jobs and taking advantage of opportunities as they present themselves.***

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*Harlan Cleveland, et al., The Overseas Americans, New York, 1960, p.3.

**The 1959 full year figure of American students and faculty abroad exceeded 15,000 according to Open Doors 1960 published by the Institute for International Education.

***Harlan Cleveland et al., op.cit., p. 104.

For a sense of numbers we must add their families. Cleveland, et al., project their estimate of 25,000 employees of American business organizations to an estimate that for the American business population living abroad is over 100,000.

For our purposes, however, let us take conservative figures and assume that the only persons who engage in serious contact with foreign decision makers are the employed overseas Americans, themselves. Still, the conclusion remains clear that the diplomatic service is but a small drop in the flood of contact.

Even among the 33,000 U.S. Government employees abroad, the State Department employes but 6½ thousand. The Defense Department employes 21,000, ICA 3,000, USIA 1,000.

Furthermore, the overseas resident American is far from the only or main American point of contact with the rulers of a foreign nation. There are some 5,000 private organizations which engage in international contact. Among the million and a half Americans who want overseas least year, the travelling special correspondent, the travelling distinguished scientist, writer, politician or businessman, the visiting movie maker, or entrepreneur, or exhibitor, all provide a constant flow of Americans through the prime ministerial palaces of the world. Indeed in some capitals, e.g. New Delhi, the amount of time the head of government ought to spend with American visitors has become a recognized issue debated in those elite circles cognizant of problems of administrative

management. Among them some believe that Mr. Nehru wastes time seeing excessively many passing Americans while others recognize the value of this contact as a long run instrument of policy.

Indeed, typically any American who is anybody is apt to think a visit to India incomplete if he does not interview Nehru. The same individuals would think it the height of presumption to ask for an interview with the President of the United States just to inform themselves about what was really going on in the country but abroad that seems a normal procedure.

It is not just ethnocentric arrogance which accounts for the difference. It is the role relationship of the outside visitor and the host. Parallel things happen when foreigners visit the United States. The head of a new African state of three million people will be offered a distinguished reception in Washington. The foreign leader grant tourist can knock on many doors which would be closed to him at home.

A more general proposition is that the stranger moves into an established social structure at levels that are quite unpredictable from his status at home. He is free from the rigid bonds of well-established status expectations.

Some variables push him down. Among these are ethnocentric prejudice and lack of appreciation of the status symbols he offers. A disliked color or a bad accent may result in his being demeaned in the society in which he is a visitor. Or perhaps he is regarded

as a great man at home because he is a poet in a society which honors poets or a magic working ascetic in a society which honors them. In a more practically oriented society which he visits he becomes a screwball. Finally, he is apt to be pushed down if his individual status at home exceeds the norm for his category, for that may not be known abroad. A professor abroad will be treated as a professor, a journalist as a journalist. If he happend to be the Walter Lippmann of his country that fact will not be known to many of those he meets abroad.

Other variables push him above the status he would have at home. One of these is scarcity value. There are only a relatively few individuals from his country to satisfy the curiosity and interest which exists in the host country concerning their homeland. Another factor raising the status of the guest is politeness.

Americans in particular find themselves raised in status when abroad.

> "Many say frankly that they enjoy the feeling of 'being a big frog in a little pond.'...'My husband deals with the cabinet ministers here,' the wife of an industrial expert told us in one Far Eastern country. 'He's just an engineer; if we were home, the Secretary of State wouldn't give him the time of day.' In their offices, on their construction jobs, at their air bases and hospitals and trading posts and mission homes, Americans find that the power of the American nation rubs off on them personally."*

In general, the hosts do not know where the stranger belongs and lacking better cues are apt to take the newcomers' own assumptions at face value. It is easy for a stranger to assume the right

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*Harlan Cleveland et al., op.cit., p. 22.

to hob nob with the highest social strata or the lowest. And what he assumes to be his proper milieu of contact will, if he is at all skillful, most often be accepted. That fact is the key to the operation of the confidence man or the fake aristocrat. But it is also an important fact for the missionary, the technical assistance worker, or any other sincere and honest international promotor of any goal.

These general comments on the sociology of the stranger arise from innumerable studies both of foreign travellers and of domestic strangers. They have relevance to the extensive practices of private diplomacy by Americans. We have noted that there are many Americans living and going abroad. We have noted also a large proportion of them hold high status positions in powerful organizations such as foundations, corporations, and public economic agencies that these persons and distinguished travellers far outnumber America's official diplomatic representatives, that furthermore, ordinary Americans abroad find their status rising far above what it was at home, that foreign governments seek out influential American visitors to communicate to, and finally that the visitor can, much more easily than at home, lay claim to contact with high elite circles. Given such circumstances affecting the large numbers of Americans of diverse views travelling abroad under diverse auspices, and given the traditional American belief in the rights of individual expression, it would seem hard to restrict

effective international intercourse even on sensitive international matters from taking place through many other Americans besides members of the foreign service. The Ford Foundation representative with millions to dispense, the missionary who heads a college or hospital and has thousands of devoted supporters at home, the local manager of an oil company, or a foreign correspondent who is listened to by millions is bound to become a part of an active two way flow of communication and persuasion between his home and host countries.

It is perfectly clear that the foreign office in a democratic nation can hardly expect to narrow this flow by insisting on conformity to any line.* In so far as its strategy depends upon having disciplined support for its policies or uniform interpretations of events, its strategy will be frustrated. It remains to be seen whether there is a diplomatic strategy available for a democracy which takes advantage of the inevitable conflict of messages arising from private diplomacy.

2. The Consequences of Too Much Control

Suppose it were indeed possible to carry out Harry Truman's policy and to restrict diplomatic expression to the President's views. Would we wish to do so. It seems likely that such a

*Harlan Cleveland notes that "no country today can insist--as it did a generation ago--that all Embassy communications with any department of the government must clear through the Foreign Office." Cleveland and Gerard J. Mangone, The Art of Overseamanship, Syracuse 1957, p. 3.

situation would be an extremely dangerous one for this nation. It would make it less likely that other nations would recognize our true intent, and more likely that they would believe we meant what we said. That could be most unfortunate.

For one thing, control over credibility increases the temptation to bluff, and it is by no means clear that statesmen are skilled enough to be trusted to bluff. They usually know better than to try. Politicians as a whole are less subtly Machiavellian than are their intellectual advisors. They wisely tend to stick to the simple blunt approach. Black operations, they find, have a habit of kicking back unless they are sufficiently valid to continue to be effective when the mask is pulled off and they enter the grey area.* Even where the one-shot probability of exposure is small, the price of exposure may be sufficiently high to make the compounded probability of exposure from a continuing strategy of deception seem unattractive to the man with a lifetime commitment to politics.

Aside from such generalities, it seems clear that much of the stability in the world today arises from the realism which is possible in estimating the behavior of the open societies. To make the point requires a slight digression into bargaining theory. Let us assume a world in which there are only two powers, A and B. A or B can each be either an open or a closed society, the definition

* Daniel Lerner, Sykewar, New York, 1951. By grey is meant that the source is generally realized even though not admitted.

here being that the other power can estimate the intent, not just the capability, of an open society, while it can estimate only the capability of a closed society, not its intent. Ket us add one other variable, power or destructive capability. It is assumed that both powers are capable, on a first strike of imposing at least severe destruction on the other. A minor power will be defined as one which on first strike could not impose decisive destruction on the other and which if struck first could not strike back with a significant second strike. A major power could on first strike impose a decisive blow on the other, and could do so against a minor power without suffering retaliation; it would suffer severe hurt from the second strike of another major power. We assume further that if a power can do so safely it prefers peace to war. This model does not take care of all possible real world conditions, but it seems to cover the ones of major current interest.

Examination of the model will show seven essentially different conditions to be possible in which war might lead to a decisive outcome and thus be worth considering as a strategy.* It turns our that in only one of these seven conditions is war a probably rational strategy and that is the condition where both countries are closed major powers. Under those circumstances, since each has no knowledge of the other's intent and first strike is decisive (even if painful), each had better hit before being hit.

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*Take caps to represent major power, l.c. minor power; o open, c closed. A_cb_c, A_ob_c, A_cb_o, A_ob_o, A_cB_c, A_cB_o, A_oB_o.

In any other situation war is probably a mistake. For example, if A is a major and b a minor power, if A is closed and b is open, it makes no sense for b to hit A since b is not strong enough to win. Furthermore it is unnecessary for A to hit b since A knows b's intent which is peaceful. Also b will know that A has this reason to be peaceful.

In similar fashion one can look at the situation where both A and B are major powers and both open. Under those circumstances if each maintains a peaceful intent both will know it and both can maintain peace. To change this intent would at best result in severe hurt, and possibly decisive hurt. Thus each has an incentive so to act that the other is aware of his peacefulness.

The most interesting condition of all is the one where both powers are major, one open and one closed. Even under those circumstances neither power should go to war. The closed power knows the other's intent, and if it is peaceful it can safely refrain. But what of the open power. For all it knows the closed power may be about to strike it, a fate which it would want to forestall by pre-emption. But the open power knows that the closed power knows its (the open power's) intent. Thus if it starts seriously considering a pre-emptive strategy it is inviting a faster pre-emptive blow, the closer it comes to such a decision. Its greatest safety lies in making its own peaceful intentions quite abundantly clear to the closed country.

The latter asymmetrical condition is very like the present world situation. To us the Russian closed society is enough of an enigma wrapped in a mystery so that our strategic thinking has largely gone in the direction of coping with Russian capabilities, not intent. Our theories of deterrence have been almost completely non-political. We have wanted a capacity to retaliate independent of where or when the Russians might strike. We have wanted inspection to stop cheating without having to consider what motives there might be for it. And we have worried about surprise attack, i.e., attack out of the blue, unforeseeable by any system of reason. We have been perfectly right in this view being as we are an open society dealing with a closed society.

The Russians have not needed to worry about these things. They know or at least can know our intent fairly well at any time. They can, if they choose to, leave their missles unhardened on fixed sites because they know perfectly well we will not strike first except under the most extreme provocation, and provocation is under their control. Also they will know, if they care to, just how provoked we are. As a result they have not worried about stable deterrence, inspection, or surprise attack. Their disaramament schemes have been technically unsophisticated. The things they have talked about are substantive political issues, which affect the long run balance of power between the blocs like bases, NATO, Berlin. They could neglect short run military security for they could observe our reactions at any point.

We are clearly at a disadvantage. The obvious answer might seem to be to ourselves change to what we are here defining as a closed society. We leave aside all questions of values for the moment. Assuming that we could do so without becoming totalitarian in other respects, do we wish to give the government the power to make whatever position the President chooses to take on foreign policy appear to be the one that the nation will adhere to in practice? The answer seems to be clearly no! If we insisted on symmetry, denying to Russia the advantage she has, we would be changing the state of the interstate system as a whole to that one of the seven conditions in which war is most probable. In short, this asymmetric equilibrium in which one side, unfortunately ours, suffers a disadvantage is among the stable conditions, while the symmetric one with two closed societies is not. Thus it is to our advantage that we cannot by discipline limit the available information about our society. The outbreak of the Korean War illustrates what happens when the full range of information about our society is not used by the other side and they make the mistake of being guided just by official statements of policy.

The enemy's readiness to look behind official statements of policy at what we are realistically likely to do reduces the sensitivity of the situation to every ill-advised statement. A threat that might otherwise look ominous may look meaningless and unenforceable insofar as it depends upon our going to the brink of nuclear war; any well-informed observer of our society will see

that we are unlikely to do that. A large part of the Russian sense of security today probably arises from a conviction that the "people" in capitalist countries would not permit casual launching of nuclear war. The Cyrus Eatons and Linius Paulings and others may be far less significant spokesmen of opinion than the Russians believe. But even if there is some unreality in the Soviet image of the "people" in the West, their basic conclusion is right. If it were not for the strength of peace sentiment in the West, the dangers we would face from Soviet missiles would be far greater than they are. It is distinctly to our advantage that an enemy armed with nuclear ICBM's recognizes that our statesmen are not free to act in any reckless fashion they may wish at any time. It is to the good that the Soviets realize both that we cannot be irresponsibly aggressive and that our government cannot be pushed into a debasing or cynical deal, i.e., to carve up the world between us. Either misreading of the freedom of our statemen would be dangerous.

The evidence which our openness makes available as to where our public opinion really stands is thus an advantage to us. It assures that other nations, both open and closed, react to us in ways that take relatively realistic account of what can and cannot be expected of us. The United States could ill-afford others to accept an image of our policy reflecting nothing but the strategic manipulations of a President. Private communicators who help fill out the picture for others are serving American security in ways far beyond what they themselves realize.

3. Implications for Strategy

We have argued that our pluralistic society is unable effectively to curb the private diplomatic intercourse of its citizens and that even if it could it probably should not want to. The conclusion that a democracy needs to speak with many voices imposes a great burden on its foreign office. The latter must find strategies which will be optimum given the fact that whatever it does will come under attack from home as well as abroad. Indeed ideally, it might find strategies which turn this handicap into an asset: strategies which use the predictable fact of domestic opposition to facilitate the achievement of foreign policy goals.

Is this possible? Indeed it is possible and it is done all the time, but somehow our theorizing about diplomacy usually fails to take it into account. In the intellectual exercise of foreign policy analysis we think in terms of highly simplified games in which the players are unitary, not coalitions. We tend too often as a result to think of strategies of the kind which, in game theory, are called pure rather than mixed. The kind of dominance by a strategy which justifies the adoption of a pure strategy is less likely to occur in the complex games between coalitions than in simpler ones. So it is usually naive to view the emission of any one set of strategic messages from one side as good for it and all contrary messages as bad. It is seldom true, except for a unitary team, that uniform adherence to what the Russians call the "correct" statement is

strategically helpful and, of course, not always for such a player either.

The Berlin situation provides good illustrations. It is clear that Berlin is militarily indefensible. At the same time, we wish the Russians to perceive our commitment to Berlin as genuine, for we wish them to conclude that we could not be counted upon to peacefully acquiesce in its seizure. A naive but common view in this country was that optimum strategy for us was for Americans to emit only firm statements saying we would never yield. All public discussion of concessions or adverse realities was regarded as a kind of betrayal; these were topics fit only for secret discussions beyond foreign ears, for they might demoralize the Berliners, and encourage the Russians. Such a strategy is, we have argued, impossible in a democracy. In fact, it did not work, It took only a few sharp press conferences before influential quarters were apalling the West Berliners by publicly discussing dangerous concessions to buy the Russians off.

What alternative strategy would have utilized to the maximum the inescapable characteristic of our society, that within a short time after the outbreak of the crisis there were bound to be two sets of private American views being expressed in the world arena in opposition to the official American stand? There were bound to be some irresponsible Americans taking a modified form of the Soviet view, saying that the Soviet arguments had a good deal of

merit, that we should not dismiss their desires out of hand, and should concede at least a significant portion of the things they were asking. There were also bound to be other Americans who would simply refuse to face up to the power realities, who would keep insisting, even in 1960, that the Soviets were only bluffers with a bankrupt system whose bluff we should call with tanks if necessary.

The inevitable emergence of each of these views could be used to strengthen the hand of American diplomacy. These views are in effect a carrot and a stick. First the carrot: The presence of significant elements in America who can be seduced by Soviet wiles is an incentive to Soviet reasonableness. We would lose some leverage if the Soviets wrote off the possibility of winning ideological victories among our coalition, for why then should they assume the pose of a progressive peace loving people. And positions they take to bemuse the West also unintentionally subvert the revolutionary fanaticism of their own side.*

Similarly the presence of American firebrands is helpful. Given military realities, the one thing that is likely to persuade the Russians that seizure of Berlin might ignite military conflict

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*The zig-zag history of Soviet policy confirms that this actually happens. In relatively isolationist periods when they saw little prospect of gaining ground by influencing bourgeois society they turned to leftist themes. On the other hand the periods when they sought to affect Western policies were the periods of greatest retreat of the revolution. The fact that there are people on our side who will respond positively to Pied piping like the Stockholm Peace Appeal encourages the Soviets to develop such initially fraudulent but ultimately self-seducing schemes. The existence of an American group dedicated to some Rapacki type revisionism may be a helpful factor in moderating the character of Soviet revisionist proposals.

is the presence in the American population of significant, irresponsible, anti-communist forces --what Khrushchev calls madmen, a type he genuinely fears. That the government might be forced into an advanture by aroused morally indignant segments of the public is far more plausible than that the President would soberly hoose a path bound to lead to cataclysm or defeat.

Let me make it clear that I am not saying that foolishness is a good thing and that the more citizens we have disseminating naive views abroad the better off we are. What I am saying is that a certain distribution of views is inevitable in a democratic society; that it is possible to take advantage of such views as will exist to demonstrate possibilities in a situation which would be implausible if the President were acting soberly on his own.

The communists are well aware of the tactical advantage of being able to talk tough and encouragingly simultaneously. They have a name for this mixed strategy--the hard and soft shoulder. But they have to go to great length to organize this division of labor between spokesmen. Democracy has it built in. It happens naturally.

And so we see that it does not follow that we many voices of democracy are necessarily a handicap to the diplomacy of a democracy. They may on occasion be so. But in other circumstances skillful strategy can turn the drawbacks of democratic diplomacy into advantages. Democratic diplomacy offers opportunity for simultaneous expression of diverse possibilities. There are other advantages a

pluralistic or coalition diplomacy has.

Thomas Schelling has pointed out the advantages in a bargaining situation of being able to say, here I stand, and regretfully I am powerless to change, much as I would like to.* The power of public opinion as a cnnstraint on what a negotiator can do is a favorite ploy in this connection. The immobility of free societies is an element of strength.

Furthermore, the variety of expression which eminates from free societies is proof of their freedom. In the short run it may hurt us when rival candidates call each other names, but in the long run it becomes part of our image that we tell our opinions honestly in public. In the short run we may be hurt by what Americans say overseas criticizing our national policies, but in the long run it helps our communication that people abroad realize that a visiting American's statements are generally his actual views and not a party line.

As a result of the plural voices of democratic diplomacy its informal ambassadors reach not only the foreign ministries of foreign powers, but approach directly to all sectors of them. The voice of a democratic society is heard by the leaders of business, of the professions, of the unions, of the churches, of all institutions. This is something the Soviets also attempt to achieve by great organizational effort. They have their international associations for writers, for science, for sports, for anything one can

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*Thomas Schelling, The Strategy of Conflict, Harvard University Press, Cambridge, Mass., 1960.

think of. What the Soviets strive to organize a pluralistic society achieves automatically. People to people intercourse among democratic states provides the back-up in depth for the communications which take place at the official level between official ambassadors and other official spokesmen.

The mode of international communication of a controlled system is illustrated by the way in which the world hangs on every word Mr. Khrushchev utters. In contrast note, for example, how the U.S. efforts to expose and document communist infiltration in Cuba proceed with little need for the President of the UnitedStates to place himself in the center of the battle of words. The private mass media put our view of the infiltration before the world. United States trade unionists convey their alarm and opposition to their Latin opposite numbers. The business community does the same. So do tourists and student travellers and Americans in contact with travellers to this country. In short, private expression of political opinion in the international arena amplifies American viewpoints manifold, and puts the message into channels for every kind of listener. The Americanization of the world, of which we hear so much, is proceeding despite the reluctance and gentleness of the dragon. It is a triumph of communication not of power politics.

4. What Private Diplomacy Does to Us

Let us review for a moment. We have noted the fact of the massiveness of American personal contact with the rest of the world .

We have examined in a generally theoretical way the implications this might have for the conduct of official diplomacy. We have noted briefly but not discussed the consequences of this contact in changing the rest of the world. It remains to consider what it does to our own society. And in line with this paper's focus on the impact of person to person contact upon the practice of international relations, we shall examine what it does to the environment in which our foreign policy is formed.

For evidence on this point we may turn to the numerous recent studies on the effects of overseas experience. The largest number and the earliest of these studies were on the effects of exchange programs on the attitudes towards America of foreigners brought to the United States. More recently there has been a growing interest in studies of American personnel stationed abroad, the interest being to identify the conditions of good performance.* In addition there have been a relatively few studies of the effects on Americans of recreational and other short term travel.

While there are obviously ethnocentric biases in the orientation of these studies--we ask how the traveller to this country can be influenced by his host but how our own travellers abroad can serve to influence their environment in ways desired by us the sum of these studies is beginning to add up to a general theory

*Cf. Cleveland, Mangone, and Adams, op.cit., and Cleveland and Mangone, op.cit., esp. the papers by Mottram Torre and John Masland in the latter. Cf. also When American Live Abroad, Foreign Service Institute, 1955; Gordon MacGregor, The Experiences of American Scholars in Countries of the Near East and S. Asia, Conference Board of AssociatedResearch Councils, 1957.

of the impact of person to person international contact. There are many variables which affect the outcome: the duration of the trip, the age of the traveller, his family status while abroad, the extent of the community from his country or origin in the country he is visiting, the relative status relations of host and guest, the degree of cultural difference between them, some personality traits of the traveller such as xenophilia, knowledge of the language of the country visited, the purpose of the trip, whether study, or business, or pleasure, etc.

Thus any conclusions we draw about the impact produced on the environment for foreign policy making in the United States by the fact that hundreds of thousands of Americans now have overseas work experience and millions have travel experience must be qualified by reference to the kind of experience. Yet certain conclusions can be drawn, either because they apply in most travel situations, or because they apply in those travel situations in which influential Americans find themselves.

The first conclusion is that the effect of foreign travel is to strengthen the traveller's identification with his own country. This was found, for example, by Useem,* by Smith,** by Thanas,*** and by Pool in two studies.**** There are exceptions to this rule.

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*John and Ruth Useem, The Western Educated Man in India, New York, 1955, pp. 57ff.

**Howard P. Smith, "Changes in Attitudes Resulting from Experiences in Foreign Countries," Ph.D., Harvard.

***Katharine Thanas, Significance of Social Context for Short-Term Cross Cultural Travel, unpublished.

****Ithiel de Sola Pool, "What American Travelers Learn," The Antioch Review, Winter, 1958, pp. 432-446, and I. de Sola Pool, Suzanne Keller, and Raymond A. Bauer, "The Influence of Foreign Travel on Political Attitudes of American Businessmen," The Public Opinion Quarterly, Vol. XX, No. 1, Spring, 1956, pp. 161-175.

Japanese culture is so rigid in its requirements and American culture so different from it that the Japanese pre-war student returning from a protracted stay in the United States often found himself alienated from his own society and stayed that way. Bennett, Passin, and McKnight found that if the careers of the Japanese students were successful upon their return, they re-identified with Japan, but if unsuccessful, not.* Coelho, who studied Indian students in the U.S.A. before their return found their identification with India to be a function of time.** Those who had spent four or more years here and were in process of settling were, of course, switching their identifications, a process which America as a nation of immigrants has seen happen in every generation.

Leaving these potential immigrants aside, Coelho found that affect towards India was positively, not negatively related with affect towards the United States. The student first arrived with unrealistic magnificent expectations for his experience in America. Almost immediately, loneliness, strangeness, and political differences began a process of disillusionment. This lasted typically through at least the first six months. As attitudes towards America became more antagonistic so did attitudes towards India. Later as a more sophisticated realism set in, attitudes towards American improved and so to some extent did attitudes towards India.

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*John W. Bennett, Herbert Passin, Robert McKnight, In Search of Identity, Minneapolis, 1958, pp. 84 ff.; cf. the discussion of parallel problems in Jeanne Watson and Ronald Lippitt, Learning Across Cultures Research Center for Group dynamics, Inst. for Social Research, University of Michigan, Ann Arbor, 1955, pp. 64 ff. and in Grace Langley and Sita Basu, The Exchange of Persons, USIA, India, 1953.

**George Coelho, Changing Images of America, Glencoe, Ill., The Free Press, 1958.

Clearly, a qualification to the general proposition that foreign travel strengthens the traveller's identification with the home country is that this may not happen if the travel experience is not relatively gratifying. Contrary to what might seem common sense, unpleasant experience abroad may reflect badly on one's own country and values as well as on the host one. But this exception, along with the one about prospective emigrants, or others concerning highly deviant personality types or travel by oppressed persons, do not change the picture for the general run of American travellers. For them, foreign experiences heighten their identification with their own country and its international objectives.

That is so, not because, as the pot boiler writers would have us believe, everything in America is so much better than elsewhere. Of course, many Americans do feel that to be true, which only tells us that they identify with American ways. The reason it is so is the role relationship established in the foreign situation. The American abroad finds himself playing the role of informal ambassador. His dealings with others are defined as dealings of American and host national. This definition of identity is always present while abroad. A dispute with a clerk about a price, which at home would be conceptualized in terms of role, or kind of man, or malcommunication, will abroad be conceptualized as a clash of two different nationals. Perlmutter has shown that in the process of impression formation, nationality, if it is other than the person's

own, is a primary determinant.* And so the American finds himself speaking as an American.

A study of travelling businessmen by Pool, Bauer, and Keller demonstrates what this behavior does to foreign policy attitudes. The attitude in question was attitude toward reciprocal trade. For non-travellers what a businessman made was predictive of his attitude. He identified with the interest of his firm and its products. Among frequent travellers, however, prediction by what they made broke down. They reached policy conclusions in terms of their perception of American vs. foreign national interest. They did not all reach the same conclusions, but with that as the controlling criterion the distribution of attitudes became very similar whatever their business might be, and similar also to the distribution of attitudes among untravelled American businessmen who had no vested business interest in the issue.

Note that foreign travel did not persuade these travellers to a special foreign point of view. It did change them but it changed to to a national viewpoint of the sort that they could uphold while playing in their minds at being Secretary of State. The more justified Americans abroad feel at freely discussing major policy issues as private ambassadors the more this will happen. Thus an effect of extensive person to person intercourse under the democratic conditions we described above, is that it builds a committed constituency for the State Department among the influential executive types who engage in such intercourse. It is a constituency prepared

*Howard V. Perlmutter and David Shapiro, "Stereotypes About Americans and Europeans who make Specific Statements", Psychological Reports, No. 3, 1957, pp. 131-137, and Howard V. Perlmutter and J.S. Bruner, "Compatriot and Foreigner: A Study of Impression Formation in Three Countries," The Journal of Abnormal and Social Psychology, Vol. 55, No. 2, 1957, pp. 253-260.

to view problems from a broad but national point of view.

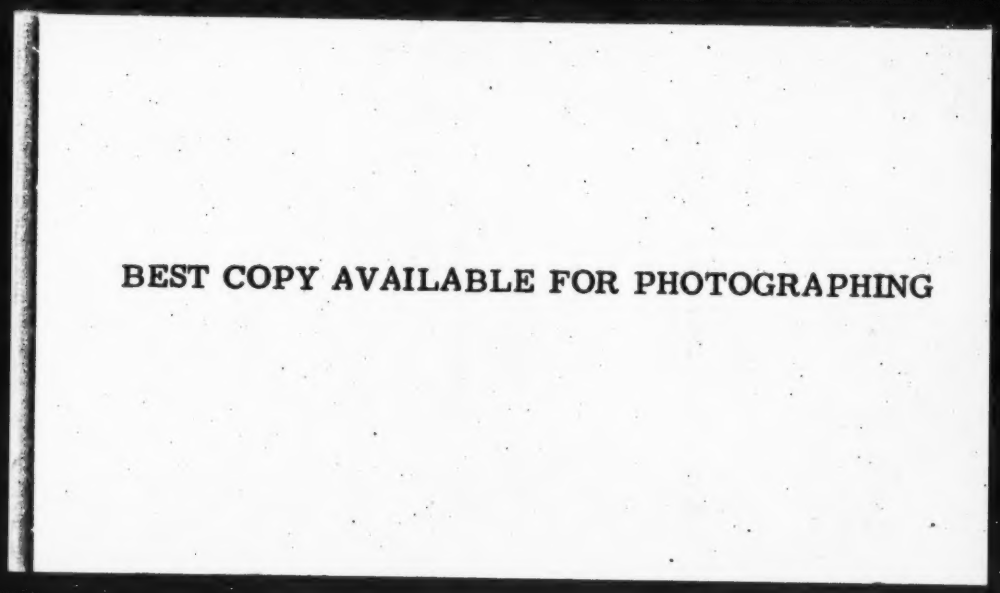
All the studies of exchange and travel show that the returnee usually retains a great deal more interest in and awareness of the foreign area than he had before. He may be more favorable or less favorable;* that is indeterminate. We are all familiar with the frequent finding of cases of extreme anti-Americanism among travellers returned from the United States. But while the affective outcome of travel is variable, it almost always increases realism, interest, and attention regarding the outside world. It replaces simple stereotypes with more complex conclusions, whichever side they are on. It replaces indifference with concern.

How far these things happen is, of course, a function of the nature of the experience. They happen less on a short than on a long trip, on pleasure than when the purpose is serious, in an American enclave than in a situation of intense participation in the local society. The impact of the person to person experience is at its height when the traveller joins a group of host citizens in working towards a common objective which they share. What we are describing is the normal operating situation of a devoted and skilled technical assistance advisor, foundation executive, educator, MAG advisor, or business manager. This is a kind of situation where the visitor enters deeply into the problems of the host society

*Cf. Watson and Lippitt, op.cit.; Milton Jacobs and Louis Schatz, Some Effects of Overseas Duty on Attitudes of American Troops Toward Hostile Populations, Hum RRO, 1954; Useem, op.cit., Bennett et al, op.cit.

and is bound, if he operates at a high level in the society, to find himself engaged in private diplomacy.

As we increase the number of persons with such experience, we will for the first time in our history be able to overcome the old complaint of the State Department, that it is the one department without a constituency. It will find it has a constituency among those who have been living its problems in their private lives.


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THE JOINT CONGRESSIONAL COMMITTEE ON ATOMIC ENERGY AND THE CIVILIAN CONTROL OF ATOMIC ENERGY

by
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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8 - 10, 1960

This paper will discuss the role of the Joint Congressional Committee on Atomic Energy as an institution in the civilian control of atomic energy. It is hoped that this discussion will give some insight as to the operations of Congress in a complex field, as well as shed some light on the over-all problem of the civilian control of atomic energy.

Background

The issue of the civilian vs. military control of atomic energy has lain practically dormant for ten years or more. Only an occasional spark of controversy has illuminated this complex area of relationships between the civilian and military branches of the Government in the past decade.

But in the immediate post-World War II years the question of civilian control was the burning issue which was thought to transcend all others in the consideration of what became the Atomic Energy Act of 1946 (known as the "McMahon Act").(1) At that time the question was whether Congress would permit the permanent Atomic Energy Commission to have active military officers on its part-time governing Board, and as its full-time Administrator and Deputy Administrator. This legislative proposal was contained in the May-Johnson bill introduced in the fall of 1945.

It was in this period that the atomic scientists first became politically active.(2) This era was vividly recalled by an observer of the day, who

*The views expressed in this article are, of course, solely those of the author, and should not be attributed to any Government Agency or the Joint Committee on Atomic Energy. The author is indebted to Miss Dorothy Schaffter and Mrs. Dorothy M. Bates of the Library of Congress for annotated references, and to Miss Patricia McMahon for notes on the legislative background of the civilian control problem.

commented:

> "To many, this was a simple choice between war and peace. To others, advocacy of civilian control was a means of preventing 'brass hat' abuse of our precious asset, atomic energy. To many scientists, the issue was posed in related terms: military control meant a continuance of arbitrary decisions, uncomprehending bureaucracy, and an intellectual gap which the military officers showed little interest in bridging. To a few historically-minded souls, the issue was one of democratic tradition--the armed forces with their essentially authoritarian training and discipline would not be adequately responsive to the public will."(3)

The civilian control issue was resolved in the McMahon Act by the establishment of a full-time civilian five man Atomic Energy Commission, a civilian General Manager, and a civilian Joint Committee on Atomic Energy. The AEC was to be responsible for the development, manufacture, and custody of atomic weapons and other military applications of atomic energy, but the President was authorized to transfer or delegate any of these functions to the military departments. The collaboration and participation by the military in the atomic energy program was facilitated by providing that the Director of the AEC Division of Military Applications should be a military officer, and by the establishment of the Military Liaison Committee which was to provide a two way means of communication between the AEC and the military. Thus, the MLC was established to be the "watchdog" of the military over AEC, and the Joint Committee was to be the watchdog for the Congress and public over both the military and AEC.

The reasons for the establishment of civilian supremacy in the atomic energy program were several.(4) It was thought that responsibility for the development of policies in connection with this great new force should be in civilian hands reporting directly to the President.(5) The 1946 McMahon Act attempted to emphasize the conduct and encouragement of peaceful civilian research and uses of atomic energy (as well as military uses) which would be better handled by civilians. It was believed that a civilian agency would be more efficient, even for military applications, and particularly in obtaining the all important continued participation and cooperation of the scientific community. It was further believed that by placing control of atomic

energy in civilian hands we would give added assurance to the world that the United States contemplated no military adventures, and strengthen the U.S. position in negotiating international controls on atomic energy development.(6)

It is not the purpose of this paper to trace in detail the subsequent history of civilian control of atomic energy, and the various changes in relationship between the several institutions involved, particularly the AEC. Suffice it to say that in 1948, as several of our participants will recall, the principle of civilian control was challenged in part by the military through Secretary of Defense Forrestal.(7) This issue, which involved a proposal that custody of atomic weapons be transferred to the military was resolved by President Truman in favor of continued civilian custody.(8)

Since the 1947-50 period many aspects of the military applications of atomic energy have changed. From an era of extreme scarcity of raw materials and finished weapons, we have reached a stage of a temporary surplus of uranium ore and we have large stockpiles of weapons of many sizes and yields. Instead of reliance solely on delivery as a bomb from aircraft, atomic weapons can now be delivered as warheads on missiles, and in artillery and bazooka shells. Additional military applications have come to the fore, including nuclear powered submarines, nuclear rocket development, and compact nuclear power reactors for remote military installations. And finally, we have seen the Soviets, and the United Kingdom, develop a nuclear weapon capability, and are watching the French attempt to do so.

All of these developments have posed many new problems. Thus there is the problem of numbers--what is manageable for a relatively few weapons may not be for hundreds or thousands. This compounds the ordinary problems of storage, handling, protection, safety, and secrecy classification. Problems are accentuated by the necessities of location not only in the continental United States, but in aircraft and ships, and at overseas bases. A further problem is the need to have atomic weapons ready for action in a very short period of time. And there are not only problems between AEC and the Defense Department, but also between the United States and its allies.

In view of these changes in program, it is not unexpected that changes have occurred in civilian-military relationships; i.e. in civilian control.

Old institutions, such as the Military Liaison Committee, have apparently been supplanted in some ways. New combined military-civilian groups, such as the Naval Reactors Branch under Admiral Rickover, have been successfully established within the Atomic Energy Commission. The State Department has been assuming a greater role through its office of atomic energy and disarmament.

General Role and Organization of Joint Committee

It is the purpose of this paper to discuss and analyze the role of the Joint Committee on Atomic Energy as an institution in the civilian control of atomic energy. As indicated previously, the Joint Committee in a sense is one of the two primary institutions in the civilian control of atomic energy. For it was this "watchdog" role of the Joint Committee for which it was primarily established. This was made clear in the original report of the Special Senate Committee which reported out the McMahon Act, with the following language:

> "The importance of the field of atomic energy, coupled with the unique character of the problems raised by its development, makes it peculiarly desirable and necessary that the Congress be fully acquainted at all times with the work of the Commission. The bill in section 16 makes provision for reports which will contribute to this end.
>
> "More important, however, is the provision for the establishment of a joint congressional committee, to be composed of nine Members of the Senate and nine Members of the House of Representatives, directed to make continuing studies of the activities of the Atomic Energy Commission and of problems related to the development, use, and control of atomic energy.
>
> "The joint committee is empowered to hold hearings, to act on legislation, and to equip itself with a staff of such experts and technicians as it deems necessary to carry out its functions.
>
> "The usefulness of such a committee in focusing responsibility in the Congress and in keeping the legislature informed cannot be overemphasized. The joint committee will be in a position to give substantial aid to the Appropriations Committee; and to give consideration to supplementary and amending legislation as the need arises."(9)

It has often been noted that the Joint Committee is a somewhat unique Congressional institution. For one thing it is the only Joint Committee

which has legislative functions in that all bills relating to atomic energy or the AEC are referred to it and it is empowered to make legislative recommendations to both houses of Congress. Since the 1954 amendments, legislation to authorize appropriations for capital facilities, and since 1957 legislation to authorize governmental financial participation in atomic power projects, have also been required and must be referred to the Joint Committee. A further statutory requirement that AEC and the Defense Department keep the Joint Committee "fully and currently informed" of all activities relating to atomic energy is also somewhat unusual in Executive-Congressional relationships.

The Joint Committee is composed of eighteen members, nine from each House. No more than five members may be from the same political party in either House. The Chairmanship rotates every two years between the Senate and the House. The Joint Committee has a staff of some twenty-odd employees of whom about eight or nine are professional employees. In carrying on its work it utilizes extensively consultants and assigned employees from AEC and its laboratories and the Defense Department. It has also been ably assisted by the Library of Congress and the General Accounting Office--organizations which are primarily responsible to Congress.

In assessing the sources of the Joint Committee's authority, Chairman Anderson and the author recently stated:

> "Reference has already been made to the Joint Committee's principal statutory sources of authority, namely, acting as a joint unit for both houses of Congress, its right to be currently informed, and its enlarged legislative responsibilities. Also of importance have been the statutory requirements of Joint Committee review of important domestic atomic power development arrangements, as well as international arrangements for co-operation with foreign governments covering the peaceful development of atomic energy and military uses.
>
> "From a practical standpoint the success achieved by the Joint Committee over the years has resulted from the continuity in membership of many of its leading members, and its efforts to keep the United States in the forefront of atomic energy development. The tenure of many of its senior members goes back to the original Joint Committee appointments in 1946, and several other members number eight or ten years of service. This is in contrast with the Atomic Energy Commission which currently has four new Commissioners and a new General Manager."(10)

In relation to military problems, it should be noted that several influential members of the Joint Committee also serve on the Committees of the House and Senate which deal with the armed services, foreign relations, and appropriations. Several members of the Joint Committee are also reserve officers in the armed forces.

Role of the Joint Committee in Relation to Civilian Control -- Individual Views of Joint Committee Members

Several members of the Joint Committee were leading proponents of civilian control when legislative proposals were first considered in 1945-46. Congressmen Holifield and Price joined in a minority report on the May-Johnson bill. Congressman Durham served on the conference committee which finally hammered out the compromises on the McMahon Act. Senator McMahon became probably the best known proponent of civilian control both before and after the enactment of the Atomic Energy Act of 1946 up until his untimely death in 1952. Senator Vandenberg also made an original contribution to the establishment of civilian control.

In the years that followed, Congressmen Durham, Holifield and Price continued their championing of civilian control. Thus, in connection with the 1954 amendments to the Atomic Energy Act, Congressmen Holifield and Price stated in part in their dissenting views:

> "Although we do not believe H.R. 9757 departs in any fundamental way from the accepted principle of civilian control and management of the atomic energy program, we wish to take this opportunity to alert the Congress and the public to the possibilities that lie ahead.
>
> "It is generally acknowledged that atomic weapons are rapidly achieving a conventional status in military planning for national and allied defenses. Accordingly, we may expect that the military will steadily seek increasing control over the weapons phases of the atomic energy program. This is not said in criticism but only as a reminder that there are bounds which the military must not transgress if the principle of civilian control is to be maintained.
>
> "Military influence in the Atomic Energy Commission is by no means lacking and, we believe, it is more pervasive than heretofore....."
>
> "The pending bill gives new authority and responsibility to the Department of Defense in various atomic affairs."(11)

Congressman Durham, in his capacity as Chairman of the Joint Committee in 1958, called attention to new problems of both small inroads by the military, and potentially large increases of military control in the field of nuclear propulsion for outer space. In a speech at the annual meeting of the Atomic Industrial Forum he stated in part:

> "Last year I pointed out that most of our progress under the 1946 and 1954 Atomic Energy Acts is attributable to the fact that we have had a CIVILIAN Atomic Energy Commission responsible for the entire atomic energy program.
>
> "This policy of civilian control is presently being put in jeopardy in two different ways. First is by the process of nibbling--of proposing detailed changes in the Atomic Energy Act and practices thereunder which may enhance the role of the military..... Moreover, we are also faced with a serious challenge to civilian control in the field of outer space propulsion."(12)

In a recent speech on the Floor of Congress, Congressman Holifield spoke of the problem of "erosion of civilian control" in relation to proposed arrangements for custody or transfer of atomic weapons to NATO countries. He stated:

> "There has been a constant campaign to obtain acceptance of the fiction that 'after all a nuclear weapon is just another weapon.' 'The nuclear weapon is a conventional weapon now.' I regret to say that there has been an erosion of civilian control. Part of this erosion is due to a gradual step-by-step surrender to the steady pressure of our strong and entrenched military bloc. Part of it is due to the multiplication of nuclear weapon types and quanties in inventory."
>
> * * *
>
> "These problems will not go away nor will they be solved by our refusal to recognize that technological change has made obsolete the old and cumbersome procedures.
>
> "My plea is that we do not try to solve them through subterfuge or a calculated program of deceit. Let us lay the problem on the table and talk sense to the American people and our allies. Unless we can bear the burden of new challenges, through the exercise of our historic democratic processes of discussion, debate, and publicly arrived at decisions, then our way of life is doomed."(12a)

On the Senate side, Senator Anderson has taken the lead in relation to preserving civilian control. (Since there have been no clearcut issues on civilian control in recent years, and also because of problems of secrecy, there has been little occasion for expression of views on the subject by other members of the Joint Committee.)

Committee Role in Civilian Control

As mentioned earlier, the role of Joint Committee in relation to civilian control has been that of an all around "watchdog." Senator Anderson in a recent statement in connection with the President's press interview on the transfer of atomic weapons to NATO allies expressed the Joint Committee traditional role as follows:

> "If and when a proposal to change the law comes to our Committee its general nature and implications must be understood by the Congress and the American people. The Chairman and members of the Joint Committee on Atomic Energy stand as guarantors to the Congress and the public that secret activities in the atomic energy field are carried on properly and in accordance with the law."(13)

In analyzing the Joint Committee's watchdog role, it may be helpful to consider it in relation to four general functions carried on by the Committee: legislative; investigative and inspectional; informational; and policy making.

Legislative Function

Thomas and Northrop have pointed out in their book that in the early years the Joint Committee was primarily interested in making the establishe civilian-military relationship work in practice.(14) It was not until the amendments of 1954 that any significant legislative changes were made affect this relationship. However during 1947-51 various bills to permit greater military participation were permitted to die in Committee. In 1951, an amen ment was reported out of the Joint Committee and enacted which permitted transfer of Restricted Data to U.S. allies (intended only for the British) and provided for Defense Department participation only through the National Security Council.

1954 Amendments

The 1954 amendments provided for considerably greater latitude in the Defense Department for the security clearance of its own employees and those of its contractors.(15) Theretofore such employees had to be cleared by AEC, based on FBI investigations. Provision was also made for

greater participation by the Defense Department in the classification, declassification and "trans-classification" of Restricted Data and defense information.(16)

The 1954 amendments also authorized the transfer of Restricted Data to U.S. allies. The President was given authority in section 144 b. to authorize "the Department of Defense, with assistance of AEC," to communicate Restricted Data in certain categories to an allied nation or regional defense organizations such as NATO. The Restricted Data categories were those necessary to: "(1) the development of defense plans; (2) the training of personnel in the employment of and defense against atomic weapons; and (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons." A proviso was added to the effect that the Restricted Data on weapons must be confined to external characteristics and there must be a joint judgment by the Defense Department and AEC that any such data "will not reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon."

Thus for the first time the Defense Department was given authority to transmit atomic information constituting Restricted Data to foreign countries. It should be noted, however, that this information was necessary in connection with activities which normally would be handled directly by the military; i.e., planning, training, and defense against atomic weapons. Also AEC was to "assist" the Defense Department and participate in a joint determination as to the extent of weapons information to be transferred. On Restricted Data relative to research, development, and production of special nuclear material the Atomic Energy Commission was given responsibility for transmittal of information without Defense Department "assistance."

Another somewhat obscure change or interpretation in the law apparently permitted the Defense Department to deal with nuclear components of weapons and nuclear warheads of missiles separately from the weapons system and the missile itself from the standpoint of secrecy classification and custody. This was later to be interpreted by the Defense Department to permit the transfer of Restricted Data on submarines to the United Kingdom, and to permit nuclear warheads on missiles to be treated separately from the missile vehicle itself in terms of development and manufacture, and transfer of ownership and classified information. This was accomplished primarily by the new definition of atomic weapons in section 11 d.

It was these overt grants of authority, and possibly others less direct, which caused Congressmen Holifield and Price to set forth their qualms as to the proposed changes on civilian control.

To somewhat balance the additional grants of authority to the Defense Department, the Joint Committee added and the Congress enacted certain provisions intended to strengthen the Joint Committee's "watchdog" position in relation to the Military. First it added a provision to section 202 of the Act to make the Defense Department subject to the same requirement as the AEC in keeping the Joint Committee fully and currently informed as to all its activities relating to atomic energy. Secondly it added provisos to sections 144 and 123 to require that all agreements of cooperation, including military agreements of cooperation, must lie before the Joint Committee for thirty days before becoming effective.

1958 Amendments

Following the Soviet sputniks and the resultant NATO conference in the fall and winter of 1957, the Executive Branch proposed additional revisions to sections 144 and 91 to shore up U.S. alliances in the face of the increasing Soviet technological and missile threat.(17)

bill
The proposed/provided for the elimination of the proviso in section 144 b. preventing the communication by the Defense Department of "important information" on weapons design in connection with training activities. A new section 144 c. was proposed to be added which would permit complete exchange of design information on atomic weapons and submarines between AEC and foreign oountries. A new section 91 c. was proposed to permit the President to authorize AEC or the Defense Department, as appropriate, to transfer to cooperating nations non-nuclear parts of weapons and weapons systems; nuclear reactors for submarines and other military applications; and source, byproduct and special nuclear material (U_{235} and plutonium) for use in weapons or in nuclear reactors for military applications.

None of these provisions changed the previous pattern as to responsibilities between AEC and the Defense Department. However, the Defense Department did propose to obtain greater authority in the trans-classification of information.(18) And the division of responsibilities between AEC and the Defense Department was left somewhat vague in section 91 c.

Although responsibility between AEC and the Defense Department was not changed significantly, the extent of permissible transfer and exchange of atomic information, materials, and non-nuclear parts with foreign allies was substantially enlarged. This caused certain segments of the scientific community, and certain groups with pacifist leanings, to view the proposals with alarm. The principal basis of their fears was not so much the military, as the stimulation of the nuclear arms race with the Soviet bloc, and the possible facilitation of the entry of a "fourth" nation and subsequently other countries into the atomic weapons picture.(19)

The Defense Department provided a substantial portion of the testimony in favor of the amendments. Certain representations and assurances were made which, as we shall see, have been subject to considerable subsequent discussion.

The Joint Committee in reporting out the 1958 amendments, and Chairman Anderson on the Senate floor, added a number of restrictions and limitations.(20) One of these had the effect of limiting detailed weapons cooperation to the British.(21) Another gave the Congress a veto over future military agreements for cooperation by means of increasing the waiting period from thirty days to sixty days and providing that no agreement could become effective if a concurrent resolution of disapproval should be adopted by the two Houses of the Congress during the sixty day waiting period.(22)

Since 1958, no significant amendments of the Atomic Energy Act affecting civilian control have been adopted. However, on July 15, 1958 on the Floor of the Senate an amendment to the AEC Authorization Bill for Fiscal 1959, sponsored by the Defense Department, was proposed, which provided for Defense Department approval on transfers of funds by AEC under section 106 for AEC weapons facilities. Although the amendment was agreed to by the Senate for purposes of study, it was eliminated in conference.(23)

Another amendment was proposed by AEC Chairman McCone in 1959 with Defense Department support would have removed AEC's responsibility for establishing or approving safety regulations applicable to weapons and atomic reactors in the custody of the Defense Department.(24) The question of AEC's responsibility for approving safety regulations was first raised in 1959 by Admiral Rickover wearing his AEC hat. In testimony before the Joint Committee, during an underwater hearing on board the submarine SKIPJACK, Admiral Rickover indicated that he believed that AEC was the legal and proper agency for the approval of Navy safety regulations applicable to nuclear submarines.(25)

The AEC, possibly in view of the increasing number of crashes of military aircraft carrying nuclear weapons, wanted its responsibilities for safety clarified so that it would not be held responsible for failures in design of aircraft or weapons. The proposed solution was an amendment to authorize the President to designate the responsible agency for safety as between AEC and the Defense Department.

The Joint Committee after considering various alternatives, did not report a bill out. Instead it requested reports on the problems involved from AEC and the Defense Department for consideration in the Second Session of the 86th Congress, beginning in January of 1960. As of August 15, 1960 the two agencies had not submitted the requested reports.

Policy Making and Recommending Functions

Perhaps the most unique function of the Joint Committee in its "watchdog" role has been its affirmative policy making and program recommending function. Normally a watchdog is supposed to exercise a negative or restraining role. But the problem of the military in many cases is not that it has tried to do too much but that it has been content with too little. Faced with this situation the Joint Committee has made many contributions to the national defense and security.

The Joint Committee's affirmative role in the decision to build the H-bomb and its initiative for the large buildup in the AEC raw material and production plant expansion program beginning in 1950 has been described in an article by Senator Jackson in the November 1953 issue of THE ANNALS.(26) The activities of the Joint Committee in initiating a step-up of the missiles program in 1955 and other national defense efforts are described in a letter to President Eisenhower from Chairman Carl T. Durham and Vice Chairman Anderson dated December 5, 1957.(27) The Joint Committee's efforts in support of the NAUTILUS nuclear submarine and an eventual all-nuclear Navy are well-known. This was recognized in testimony by Admiral Rickover, the 'father" of the nuclear Navy, as follows:

> "Admiral RICKOVER. There is one more thing I must say which I have said many times before, but I would like to say it again. Had it not been for the Atomic Energy Commission and the Joint Congressional Committee we would not have any nuclear-powered naval vessels today. I think these two organizations and their way of operating deserve most of the credit."(28)

A brief review of the authorization of the new Hanford plutonium reactor in 1957-58 should help in understanding the Joint Committee's affirmative role and methodology. The chief culprit in the enterprise was the so-called "requirements system" of the military services. In order for any development or production project to be sponsored by the military, the top management has to establish a "requirement" for its end product, whether it is conventional tanks or aircraft, or nuclear weapons, or the special nuclear material (U_{235} and plutonium) necessary for weapons.

In 1947 at the first meeting of the Joint Committee which considered military applications, the Committee criticized the method used by the military in establishing requirements for U_{235} and plutonium (then called "fissionable material") because requirements were based on AEC existing production capacity. Again in the 1950-52 period the Joint Committee was critical of the requirements system, and, in effect, persuaded Congress to establish requirements in terms of national needs for an enlarged stockpile

of weapons in the face of the Soviet threat. The expansion program for the U_{235} diffusion plants at Oak Ridge, Paducah and Portsmouth, and the plutonium production plants at Savannah River and Hanford, resulted.(29)

Following the above expansion period, the Joint Committee Chairman and the Chairman of the Military Applications Subcommittee, in 1955 and 1956, pointed out that there were still shortages in regard to special nuclear materials.(30) In 1957, the effort to authorize construction of an additional large plutonium production reactor was begun in earnest. An engineering and design study was authorized in the AEC Authorization Act for fiscal 1958.(31) In fiscal 1959, the Congress authorized $145 million for a single purpose production plant with built-in features which would make it "convertible" to dual purpose operation for electric power production subject to later authorization.(32) In justifying the project, the Joint Committee's unanimous report stated:

> "The Joint Committee has studied the problem of plutonium requirements for many years. It seems clear to the committee that fiscal limitations, rather than sound military planning, have held back necessary increases in our plutonium production facilities. The committee is convinced that dollar limitation, while important, should not dictate national defense policy, and that more plutonium production facilities are urgently needed. The committee has therefore recommended to the Congress project 59-a-5, a new $145 million production reactor facility at Hanford, Wash., as a minimum effort vital to new weapon development and our improved defense posture. In the event a limitation of armaments agreement should be successfully achieved, the facility can be converted, after congressional authorization, to peaceful purposes."(33)

It will be noted that budgetary considerations rather than the military, as such, are the targets for consideration. Indeed the Joint Committee report pointed out that the Army, Navy, and Air Force, and the Joint Chiefs of Staff, had all recommended additional production of plutonium. In addition, AEC weapons laboratories and a special Panel of the Subcommittee on Military Applications had testified as to the need for more plutonium. As a parting shot at the requirements system, the Joint Committee report stated:

> "Since 1947, the committee has been critical of the Defense Department method of determining requirements based not on the military needs but rather on the Commission's planned production rate. (A summary of Joint Committee interest in this problem is set out in appendix I, p. 24.) It is essential that the Department of Defense correct this procedure and determine

future military requirements of reactor products solely on military needs independently of Commission planned production schedules."(34)

The sequel to this story is that after some more encouragement by the Joint Committee, the Defense Department finally came up with a long-term schedule of its requirements for U_{235} and plutonium. But Senator Anderson, while commending the Defense Department for this effort sadly pointed out in an article in Nucleonics:

"We have recently learned that the Defense Department has finally developed a long-term requirement for its future needs for plutonium. But no one should be surprised if this long-term requirement coincides with the production from current AEC facilities plus improvements and the new Hanford reactor. So round and round they go!"(35)

Investigative and Inspection Functions

The Joint Committee has not utilized its formal investigative powers to any considerable extent in connection with the Military. However, the Committee has made studies of various aspects of military applications of atomic energy. For example in 1958 Senator Jackson, Chairman of the Subcommittee on Military Applications, established a Panel of outside experts to study the need for plutonium and problems of undersea warfare. The reports of the Panel have been most helpful to the Committee and the Executive Branch.(36)

Inspection trips by Committee members to installations operated by the Military are another means of keeping up on current problems. In 1955, for example, on a trip to European installations, Chairman Anderson and other Joint Committee members discovered certain deficiencies in U.S. weapons installations which were called to the attention of appropriate U.S. military officials and corrected. In 1959 Senator Jackson visited U.S. Antarctic scientific bases operated by the Navy and recommended the provision of atomic reactors for such remote sites. In the AEC Authorization Act for fiscal 1961, $13 million has been authorized for such atomic power plants. In July of 1960, Congressman Van Zandt and a Committee staff member visited U.S. Arctic bases from Greenland to Alaska and also recommended the provision of atomic power plants for these areas.

Joint Committee classified hearings and briefings in executive session by the Defense Department, AEC and CIA serve to keep the Committee and staff informed as to the current status of military applications of atomic

energy, and provide leads as to possible problems. A number of such classified meetings are held in each session of Congress, and in case of emergencies, between sessinns. Five meetings were held on the weapons custody problem alone in the period of November 1959 to July 1960.

On occasion the Joint Committee requests special reports from the Defense Department on specific problems. Thus, when the Committee first heard informally of the proposed "2 key" arrangement on joint custody of U.S. atomic warheads with foreign contries, it immediately requested a full report on the matter.

Informational Functions

An important part of the Joint Committee's watchdog role is to make available to the Congress and the public information and judgments on military applications of atomic energy, the detailed basis of which may be classified in whole or in part.

In recent years, the Committee has made a determined effort to conduct public hearings on important questions in which the technical aspects had been cast in doubt because of prior secrecy. Examples include the hearings held in 1957 and 1959 on radioactive fallout from weapons testing,[37] and the hearings on the effects of nuclear war held in 1959.[38] In the spring of 1960 public hearings were held by the Joint Committee on the technical aspects of the detection of nuclear tests.[39] In each case, a Summary-Analysis report of the hearings was prepared and issued for the information of Congress and the public.[40] We have been informed that these hearings and reports have become valuable reference books for scientists and engineers, as well as laymen.

The Joint Committee has also followed a practice of publishing in the Congressional Record proposed military agreements for cooperation (as well as civilian agreements) with foreign countries. Public hearings have also been held on the proposed military agreements, and reports issued.

Speeches and press statements by members of the Joint Committee are another method of informing the Congress and the public on problems of military and civilian control of atomic energy. For example, Chairman Anderson in 1956 revealed in a speech on the Floor of the Senate that the Defense Department and AEC were proposing to transfer secret design information and blueprints of the NAUTILUS nuclear submarine to the British, contrary to the intent of the law as interpreted by a number of members of the

Committee, including Congressman Cole, the ranking minority House member.(41)

More recently, on February 3, 1960, Chairman Anderson felt it necessary to issue a statement concerning the President's answer at a press conference to a question whether the United States should transfer nuclear weapons to its allies.(42) The President's press conference occurred on the day following a classified Joint Committee session with the Defense and State Departments and AEC on the status and plans for the custody of U.S. atomic weapons. Following various leaks to the press by the Executive Branch, Congressman Holifield made speeches on the Floor of the House on February 9, and March 9, 1960 as to various problems involved in proposed custody arrangements.(43)

* * * * * *

From the foregoing discussion, it should be evident that the Joint Committe has had a varied approach to its over-all watchdog role in the maintenance of civilian control of atomic energy. The performance of its various functions has entailed numerous contacts and relationships between Joint Committee members and staff with representatives of the Defense Department and the Army, Navy and the Air Force Departments. On the whole, relationships have been good, especially between the military officers of the armed services who regularly appear before the Joint Committee, and the Committee members and staff.

Paradoxically it has been the civilian representatives in the Defense Department who have had the most difficulties in relationships with the Committee. On reflection this is understandable, since problems in recent years have related to the effect of budget ceilings on programmatic decisions, and other top level policy and management problems. Some of these problems will be discussed in the following pages.

Problems of Joint Committee in Civilian Control Role

1. Keeping Fully and Currently Informed

One of the chief problems for the Joint Committee in its "watchdog" role has been the practical matter of actually keeping fully and currently informed on important aspects of the military applications of atomic energy as they develop.

The Joint Committee has had its problems with AEC in keeping informed, particularly in the period of 1953-58. But the Defense Department

presents even more difficulties because of its large size, its multifold layers of authority, and the fact that atomic energy is only one of many activities under its umbrella.

The Atomic Energy Act of 1954 places an affirmative obligation on the Defense Department, as well as AEC, to keep the Joint Committee fully and currently informed as to all its activities involving atomic energy applications. The Joint Committee report on this provision in 1954 stated that the obligation applied to "pending" matters as well as those where the Defense Department had taken final action or reached a "position." The Defense Department in its procedures, however, provides for reporting only on "significant" matters, and only after final action has been taken within the Defense Department.

There appears to be some question in recent years as to whether the Defense Department has performed its statutory obligation even with respect to certain "significant" matters. Thus as noted previously, the Joint Committee was not officially informed of the so-called "2 key" custody arrangement for U.S. thermonuclear warheads on foreign-owned Thor and Jupiter missiles until the Committee requested such information. Other cases could probably be mentioned, such as the revelation by an official spokesman of the Executive Branch that land-based Polaris type missiles with thermonuclear warheads were being considered for some type of joint U.S.-NATO arrangement.

2. Reporting to Congress and the Public

A further problem encountered by the Joint Committee in its watchdog role has been that of real or contrived secrecy labels preventing public discussion of issues. The technical details of any military atomic project must usually be classified and with justification. Occasionally even a unique idea or concept is so "hot" it must also be classified. But in many cases, particularly after a lapse of time, it is necessary and possible to provide unclassified descriptions of projects or arrangements in sufficiently general terms as to permit meaningful discussion and yet protect security.

Joint Committee members have made a considerable effort to observe the letter and spirit of secrecy regulations. In some cases, this has regretably prevented full and free discussion of policy issues of importance to the Congress and the Country.

The security problem has been accentuated by the 1958 amendment to section 123 which provides for a sixty day waiting period on military agreements of cooperation with the proviso for a veto by concurrent resolution of the two Houses of Congress. In the debate on the 1958 amendments, various

House members questioned how the House would be informed by the Joint Committee as to the problems involved in military agreements of cooperation. They received assurances from members of the Joint Committee that the Joint Committee would report to the two Houses on the issues as fully as security would permit. In this connection the report of the Joint Committee states:

> "The Joint Committee on Atomic Energy in compliance with its duties to the Congress and to the peoples of the United States will closely and thoroughly review any and all proposed agreements for cooperation that will be submitted to it pursuant to the amendments contained in this bill. The members of the Joint Committee are keenly aware of their important responsibilities to the Congress and to the peoples of the United States."(44)

Sometimes the problem of reporting to Congress and the public is made more difficult by security labels imposed by the fiat of the Executive Branch which bear no relation to real security. In statements on March 19 and 22, 1959,(45) Senator Anderson made public a report by the Defense Department on fallout from weapons tests which revealed that stratospheric fallout was coming down much faster than AEC had predicted. This report had been classified "confidential-defense information" but after much discussion between the Defense Department staff and the Joint Committee staff it was declassified. However, the Defense Department attempted to keep the "confidential" tag on the report. The stated reason for the delay was in order to permit AEC to review the bases of the report, although an AEC Commissioner had received a copy of the report in December of 1958.

The problem of maintaining real security and yet keeping Congress and the public informed is compounded by the practice, unfortunately of long standing, of deliberate "leaks" of previously classified information by the Executive Branch. For example, the statement of Senator Anderson of March 19, 1959 was occasioned by a front page story in a New York newspaper which revealed hitherto classified information on the AEC high altitude "Argus" test shot which apparently had gone undetected by the Soviets and others. Thus we have the situation where the Defense Department is open to the charge on the one hand of apparently "leaking" classified information helpful to its alleged viewpoint on the difficulty of detecting tests, and on the other hand of trying to suppress unclassified information which indicated somewhat greater hazards from fallout.

Another example involved the custody problem previously mentioned. Following the Joint Committee's classified executive session on February 2,

1960, at which representatives of the Executive Branch were present, an obviously informed story on the subject of the meeting appeared the next morning in a New York paper. It was this story which provided the occasion for the President's discussion later that morning of problems of custody and transfer of nuclear weapons with NATO allies.(46) Thereupon that afternoon Senator Anderson, as Chairman of the Joint Committee, felt obligated to issue a quite restrained statement, presumably because of security and diplomatic considerations.(47) However the next day and in the weeks that followed various newspaper and magazine stories appeared which, according to the grapevine, were based on information from the Executive Branch. An example of the information provided is contained in a story in a Baltimore paper dated March 5, 1960, as follows:

> ".....Something is under consideration now within the Administration. It has come up in connection with the intermediate range Thor missiles, for example, which the United States is supplying to Britain and other NATO allies, and also with the use of such air-to-air defense missiles as the Genie, also being supplied to the British.....
>
> "In the current discussions within the Administration it is being noted that the weapons being assigned to allied forces in some of the NATO countries -- the ground-based missiles and the air-to-air missiles -- must be ready for instantaneous use.
>
> "Yet if the nuclear warheads must be under the custody only of Americans -- while the Thor or Jupiter missiles are operated by British R.A.F. units, for example, or the Genies are attached to R.A.F. bombers -- precious time could be lost in arming the missiles and in otherwise maintaining American custody until they were fired.
>
> "Thus there could well be times under presently visualized circumstances when it would be difficult to say that the nuclear weapons were under control and custody of the United States. From this situation has arisen the belief that the law should be changed."(48)

It should be noted that the Administration did not recommend a change in the law. However following this series of stories based on inside information, a tour of a Thor base in England by newspaper correspondents was permitted in which photographs of the "2 key" system were published.(49) More recently photographs of a U.S. Air Force Major with his key in front of the instrument panel for the missile launching system have appeared in newspapers and magazines.(50)

Yet in spite of what would seem to have been a deliberate publicity scheme to popularize the "2 key" system, the information was still officially classified "secret" by the Defense Department until recent inquiries by the Joint Committee. It will readily be seen that the practice of maintaining a strict classification system, together with the liberal use of leaks for political or bureaucratic purposes, can be an effective instrument in attempts to manipulate public discussion and opinion. This practice of administrative fiat as to what is classified and what may be leaked will also inevitably undermine a real security classification system.(51)

3. Problems of Keeping Faith With Congress

One of the most aggravating substantive problems affecting the relationships between Executive agencies and Congressional Committees is that of "keeping faith" with Congress. By "keeping faith" is meant the taking of actions consistent with representations and assurances given to Congress at the time of Congressional enactment of a law or amendment, or the authorization, approval, or review of a proposed policy, project or arrangement.

In the matter of civilian-military relationships in atomic energy the matter of keeping faith with Congress is particularly sensitive because of the role of "guarantors" to Congress and the public which has been assigned to the Joint Committee on Atomic Energy. Members of the Joint Committee in their reports and statements make representations to the Congress and the public as to how a proposed amendment to the Atomic Energy Act, or proposed military agreement of cooperation, will be carried out in practice. These representations in turn are based on assurances and information supplied by the Executive Branch. In their "watchdog" role Joint Committee members must therefore be on the lookout as to whether these assurances or representations are actually being observed in practice, and if not whether there is justification and authority for the change.

It was this role to which Chairman Anderson was referring in his February 3, 1960 statement concerning the President's position on weapons custody:

> "When the present law was adopted in 1958 (P.L. 85-479) the officials testifying to the Joint Committee time after time stated that it was not intended and that the law, if amended in accordance with their recommendations, would not permit completed nuclear weapons or the nuclear components of weapons to be transferred to a foreign country or to get beyond the custody of the United

States forces. In turn, the Joint Committee in its report, and members of the Joint Committee on the Floor of the Congress, defended the amendments to the law and the agreements thereunder, stating that no transfer of weapons or nuclear components was intended or permitted and that the United States would maintain custody of such weapons.....

"We therefore have a right to assume that any program the President may have to share our arms with our allies will not violate this provision, unless a change in the law is requested by the President and approved by the Congress."(52)

Chairman Anderson was referring to the weapons custody question which is an example of the problem of keeping faith with Congress. The student of civilian-military relationships might appropriately examine the representations by the Defense Department in the 1958 NATO hearings that custody of nuclear weapons components would be maintained and protected separate from the carrying vehicle; i.e., aircraft or missile.(53) The much publicized "2 key" system apparently involves the "mating" of the U.S.-owned nuclear warhead with the foreign-owned missile, and at the most the United States has joint-custody or joint-possession of such weapons.

There may undoubtedly be good reasons from a technological, operational and policy standpoint supporting changes such as the above. But in keeping faith with Congress, the question arises as to whether they should not have been disclosed and discussed, preferably in public, in order to determine whether the law or its intent was being followed before action was taken.(53-A)

A closely related aspect of keeping faith with Congress concerns following procedures established by Congress for review by Congress of proposed projects or arrangements. If such procedures are bypassed, questions of law and comity are raised. In this connection, our political scientist might inquire as to whether or not the United States' "nuclear weapons stockpile agreements" with NATO countries are bypassing the procedures established for Congressional review under the sixty day provision in section 123 d. of the Atomic Energy Act of 1954.

* * * * * *

Joint Committee Study on Status of Civilian Control

In view of the problems discussed in this paper, and renewed interest by Joint Committee members in certain aspects of the military applications of atomic energy, it is not surprising that the Joint Committee staff has been instructed to undertake a study in this area. The following subjects have been tentatively designated for study:

(1) Weapons custody and transfer arrangements, both between the Atomic Energy Commission and the Department of Defense, and between the United States and its military allies;

(2) Security classification of military information and materials;

(3) System of determining military requirements, and methods of financing such requirements;

(4) Responsibilities for safety of atomic weapons, nuclear submarines and military reactors; and

(5) Relationships between organizations responsible for military applications of atomic energy.

Political scientists may be most interested in those aspects of the study dealing with weapons custody arrangements and organizational relationships. The weapons custody arrangements may be particularly interesting, because certain "fictions" have developed between AEC and the Defense Department on custodial responsibilities, and the question is now presented whether these fictions are also being applied between the United States and foreign countries under stockpile agreements.

All of these subjects, in one way or another, bear upon the complex question of civilian control over the most devastating and powerful forces yet devised by man: Atomic weapons and nuclear energy. Our objective is to strike a proper balance so that peacetime policy decisions affecting the national defense and the public health and safety may be made by responsible civilian governmental authorities, and yet make possible rapid and effective military applications, if so directed by the President.(54) The problem is growing in magnitude and complexity, as first our own services, and now our allies, become armed with an "atomic capability." It is a problem worthy of constant vigilance and study by the Congressional "watchdog": the Joint Committee on Atomic Energy.

James T. Ramey

THE JOINT CONGRESSIONAL COMMITTEE ON ATOMIC ENERGY AND THE CIVILIAN CONTROL OF ATOMIC ENERGY

Footnotes

(1) For a fairly recent discussion of the civilian control issue in the context of other post-war problems see Walter Millis, Harvey C. Mansfield, and Harold Stein, Arms and the State (New York 1958) at pp. 155-169.

(2) See John A. Simpson, "The Scientists as Public Educators: A two-year summary, "Bulletin of The Atomic Scientists, Vol. 3 (Sept. 1947), pp. 243-246.

(3) Byron Miller, "A Law Is Passed--The Atomic Energy Act of 1946," The University of Chicago Law Review, Vol. 15 No. 4 (Summer 1948) 799-822 at p. 817. (P. 817) It should be noted, however, that the Manhattan Engineer District (MED) operated autonomously from the regular military services, and achieved spectacular success in its research and development effort.

(4) See generally James R. Newman and Byron S. Miller, "The Control of Atomic Energy" (New York 1948) at pp. 7-13; 39-45.

(5) See generally Harry S. Truman, "Memoirs" (Garden City NY 1955) Vol. 2, pp. 2-16; also letter dated Feb. 2, 1946 from Pres. Truman to Senator Brien McMahon, New York Times, Feb. 3, 1946, 8:1, 2, 3.

(6) Report, Atomic Energy Act of 1946, Special Committee on Atomic Energy, United States Senate, 79th Cong., 2d Sess., S. Rep. 1211, 1946, at pp. 5, 6; 11, 12.

(7) See Walter Millis, "The Forrestal Diaries" (New York 1951) pp. 458, 460

(8) "Truman Declares Russia Forces U. S. Into Bomb Secrecy... Military Rule is Barred...." New York Times July 25, 1948 1:5 and 4: 1, 2, Text of President's Statement, 4: 1, 2, 3. For discussion of background of military vs. civilian control and political and technical arguments of AEC and DOD respectively, see news article by Hanson Baldwin entitled "Military May Get Atomic Bomb: President's Approval Could End Civilian Control"--New York Times, June 10, 1948, 9: 1, 2.

(9) Report, Special Committee on Atomic Energy, op. cit. footnote 6 at pp. 29, 30.

(10) Clinton P. Anderson and JamesT. Ramey, "Congress and Research: Experience in Atomic Research and Development," THE ANNALS, Vol. 327 (Jan. 1960) pp. 85-94, at pp. 90, 91.

(11) See "Separate Views of Representative Holifield and Representative Price on H. R. 9757"; H. Rep. #2181-83rd Cong. 2d Sess., p. 137.

(12) Joint Committee Press Release #135, March 19, 1958, with speech attached.

(12a) Congressional Record, 86th Cong., 2d Sess. (Daily Edition), February 9, 1960, p. 2169.

(13) Statement by Senator Clinton P. Anderson, Chairman Joint Committee on Atomic Energy, February 3, 1960. Joint Committee Press Release No. 253-A.

(14) Morgan Thomas and Robert M. Northrop, "Atomic Energy and Congress" (Ann Arbor 1956) at p. 46. This book provides a good running account of the civilian vs. military problem up to 1956 in the context of other atomic energy events.

(15) Section 143 Atomic Energy Act of 1954, P.L. 83-703, 42 USC, Sec. 2163.

(16) Ibid Section 142c. and 142 d. 42 USC, Sec. 2162 c. and d.

(17) H. R. 10348, S. 3164, 85th Cong., 2d Sess. 1958.

(18) Section 6 of H. R. 10348. op.cit. footnote 17.

(19) Hearings, "Amendments to Atomic Energy Act of 1954 to Provide for Greater Exchange of Military Information and Material With Allies," Joint Committee on Atomic Energy, 85th Cong., 2d Sess. 1958 at pp. 374-385; 387-389; 410-425; 435-444.

(20) Report, "Amendments to the Atomic Energy Act of 1954 as amended" (to provide for Greater Exchange of Military Information and Material With Allies), Joint Committee on Atomic Energy, H. Rept. 1849, 85th Cong., 2d Sess. 1958, at pp. 7-10.

(21) Section 144 c. and 91 c.(4) restricted cooperation to nations which have "made substantial progress in the development of atomic weapons." For explanation of what is meant by "substantial progress" see Report cited in footnote 20 at p. 12.

(22) Section 123 d. See Report op.cit. footnote 20 at pp. 16-17.

(23) Congressional Record, 85th Cong., 2d Sess. July 15, 1958 at p. 13803; Report by Managers of House, Conf. Rept. No. 2236, July 21, 1958.

(24) S. 2569, H. R. 8754 as introduced and Report, "Amendments to the Atomic Energy Act of 1954, as amended." Senate Rept. 871, Joint Committee on Atomic Energy, 86th Cong., 1st Sess., p. 2.

(25) Hearings, "Review of Naval Reactor Program and Admiral Rickover Award," Joint Committee on Atomic Energy, 86th Cong., 1st Sess. 1959, at pp. 4-11.

(26) The period of 1950-55 is covered in great thoroughness by Thomas and Northrop in their book cited in footnote 14.

(27) Joint Committee Press Release No. 105, dated Dec. 10, 1957, with letter of Dec. 5, 1957 attached.

(28) Hearings, "Naval Reactor Program and Shippingport Project," Joint Committee on Atomic Energy, 86th Cong., 1st Sess., at p. 98.

(29) See Morgan Thomas, footnote 14, at pp. 104-108; 126-131.

(30) See Chronology of Joint Committee interest in greater plutonium in Report, "Authorizing Appropriations for the AEC in accordance with Section 261 of the AEC Act of 1954, as amended," House Rept. 2108, 85th Cong., 2d Sess., appendix 1, pp. 24-26.

(31) P.L. 85-162 (AEC Authorization Act for Fiscal Year 1958) 71 Stat. 403- Project 58-b-8, Production reactor for special nuclear material, development, design and engineering study, $3,000,000.

(32) P.L. 85-590 (AEC Authorization Act for Fiscal Year 1959) 72 Stat. 490 - Project 59-a-5, Production reactor facility for special nuclear materials convertible type, Hanford, Washington $145,000,000.

(33) Report, "Authorizing Appropriations for the Atomic Energy Commission in accordance with Section 261 of the Atomic Energy Act of 1954, as amended," H. Rept. 2108, Joint Committee on Atomic Energy, 85th Cong., 2d Sess., 1958, p. 5.

(34) Ibid, page 9.

(35) Clinton P. Anderson, "The Outlook for the U.S. Atomic Energy Program," Nucleonics, Vol. 17, No. 3 (March 1959), pp. 77-81.

(36) The Advisory Panel on Reactor Products consisted of the following members: Mr. Gordon Dean, senior vice president, General Dynamics Corp.; Dr. John Harold Lampe, dean of engineering, North Carolina State College; Dr. John A. Wheeler, professor of physics, Palmer Physical Laboratory, Princeton University; Mr. J. Kenneth Mansfield, assistant to the director, nuclear division, Combustion Engineering, Inc.

The Underseas Warfare Advisory Panel to the Military Application Subcommittee of the Joint Committee on Atomic Energy consisted of the following members: Dr. Harvey Brooks, dean of engineering and applied physics, Harvard University; Dr. Ivan A. Getting, vice president, engineering and research, Raytheon Manufacturing Corp.; Dr. Gaylord P. Harnwell, president, University of Pennsylvania; Mr. Kenneth Mansfield, assistant to the general manager, nuclear division, Combustion Engineering, Inc; Dr.

Oskar Morgenstern, professor of economics, Princeton University; Dr. Roger Revelle, director, Scripps Institution of Oceanography.

(37) Hearings, "The Nature of Radioactive Fallout and Its Effects on Man," Special Subcommittee on Radiation of the Joint Committee on Atomic Energy, Parts 1-3 and Index, 85th Cong., 1st Sess., 1957; Hearings, "Fallout from Nuclear Weapons Tests," Special Subcommittee on Radiation of the Joint Committee on Atomic Energy, 86th Cong., 1st Sess., 1959.

(38) Hearing, "Biological and Environmental Effects of Nuclear War," Special Subcommittee on Radiation, Joint Committee on Atomic Energy, 86th Cong., 1st Sess., 1959.

(39) Hearings, "Technical Aspects of Detection and Inspection Controls of a Nuclear Weapons Test Ban," Special Subcommittee on Radiation and Subcommittee on Research and Development, Joint Committee on Atomic Energy, Vol. 1-2, 86th Cong., 2d Sess., 1960.

(40) Joint Committee Prints as follows:

Summary-Analysis of Hearings, The Nature of Radioactive Fallout and Its Effects on Man, August 1957;

Summary-Analysis of Hearings, Fallout from Nuclear Weapons Tests, August 1959;

Summary-Analysis of Hearings, Biological and Environmental Effects of Nuclear War, August 1959;

Summary-Analysis of Hearings, Technical Aspects of Detection and Inspection Controls of a Nuclear Weapons Test Ban, May 1960.

(41) Congressional Record, 85th Cong., 2d Sess., July 17, 1956 at pp. 13066-13067.

(42) Statement by Senator Clinton P. Anderson, op. cit. footnote 13.

(43) Congressional Records, 86th Cong., 2d Session (Daily Edition) February 9, 1960 at pp. 2167-2168; and March 9, 1960 at pp. 4680-4683.

(44) House Report #1849, op. cit. footnote 20, at p. 10.

(45) Joint Committee on Atomic Energy Press Release #210, March 19, 1959; and Press Release #211, March 22, 1959.

(46) Transcript of President Eisenhower's Press Conference of February 3, 1960, New York Times, February 4, 1960, p. 12.

(47) Statement by Senator Clinton P. Anderson, op. cit. footnote 13.

(48) "Atomic Policy Discussed: Talks Concerning Resumption of Tests, Custody Issue," Baltimore Sun, February 5, 1960, p. 8.

(49) See, for example, "The Truth About Missiles: Where U.S. Thors Stand Guard," U.S. News and World Report, February 29, 1960, at pp. 50-51. Under this arrangement, the nuclear warhead is placed on the missile, and the launching of the missile is controlled by a key held by a U.S. officer and by a key held by an officer of the NATO country in which the base is located.

(50) See, for example, "Key to Existence," Time Magazine, August 8, 1960, at p. 21.

(51) Perhaps what is needed most is a liberalization of security practices to permit a greater discussion of policy issues, and a tightening up on the disclosure of the details of technological developments in the weapons field.

(52) Statement by Senator Clinton P. Anderson, op.cit. footnote 13. Section 92 of the Atomic Energy Act of 1954 prohibits any person to "transfer" or "possess" an atomic weapon. Section 11 q. defines person to mean a U.S. government agency, and any foreign government or nation and any representative thereof.

(53) Hearings, op.cit. footnote 19, at pp. 101-104.

(53a) A more sensible alternative would be to draw on the experience of the United Nations. For example, a joint custody arrangement between an international NATO custodial force composed of officers and men of all NATO countries and a U.S. force of sufficient size to protect our nuclear warheads might make the most sense. In such an arrangement there would be no incentive or means of a military coup by the "host" country to take over the U.S. "key."

(54) For discussions of some of the problems involved see:
Gordon Dean, "Report on the Atom" (New York 1957), pp. 131-143; and
Thomas E. Murray, "Nuclear Policy For War and Peace" (Cleveland and New York 1960), pp. 181-218.

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SINGLE PARTY SYSTEMS IN WEST AFRICA

by

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Paper prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960.

(Panel 23)

This paper [1] proposes to examine the tendency towards single party systems in West Africa, particularly in relation to the social structure and the historical circumstances in which the parties emerged. I shall therefore point up the distinction between what I call 'mass' and 'patron' party systems. I shall further consider these single party governments, most of them based on mass parties, in relation the prospects of democracy in West Africa.

My argument is that mass parties come to power as the result of networks created by African leaders out of the very liberating and egalitarian forces we in this country generally associate with democracy. Some of the mass parties encourage the growth of forces and institutions which may make possible the machinery of democratic systems familiar to us: as, for instance, free competition for the mass vote by organized teams of candidates. At this stage of West African party history, it seems to me, the number of parties is far too simple a criterion upon which to decide whether or not a system is democratic.

General statements about parties in the new West African states can be made only tentatively. On the whole, the right to vote and organize parties came to West Africa only after the Second World War. Since then formal institutional change has taken place at a rapid pace. The constitutional framework in which the parties grew changed continuously. The franchise expanded until it became universal, the powers of African elected representatives grew by stages from consultative to legislative and eventually to executive, and the place where power was effectively exercised shifted from London or Paris to Africa. Even so basic a feature of a political system as territorial and international frontiers occasionally altered. For example, Upper Volta was reconstituted as a separate territory in 1947, or some eleven years later the federation of French West Africa was dissolved and Ghana had absorbed British Togoland. The general points evident from an examination of party history over less than a score of years may well turn out to be of minor importance in the perspective of centuries--such as that available to students of North American or European politics.

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[1] Evidence for this paper was gathered during field trips to West Africa. The data on the modern and traditional backgrounds of West African leaders is to be published in my Politics of French Speaking West Africa. I am most grateful to Richard Sklar of Princeton University, N. Stultz of Boston University, and Professor Immanuel Wallerstein of Columbia University, for their valuable assistance.

All these are reasons for caution. Nevertheless, the parties are among the oldest national political institutions in West Africa, wholly Africanized long before the governments or the civil services (which still are not). Hence parties give better guidelines to African politics than formal constitutions and institutions of government. These were planted by French and British colonizers at least in part as a condition for their recent political withdrawal, and changed by Africans after independence.

The majority of the new West African sovereign nations are based on single parties, likely to dominate for some time, regardless of whether or not opposition parties are allowed to exist alongside. Most of these have governments founded on mass parties: Senegal and Soudan (the two Republics in the Federation of Mali), Guinea, Ivory Coast, Ghana, Togo, and--with qualifications--the Eastern and Western Regions in the Federation of Nigeria. Without the pressure on the French or British colonial authorities exercised by the mass parties of these states, it is doubtful whether the colonial era in West Africa would have ended quite so soon. Indeed, it might be argued that the nationalist drive of these particular mass movements, linked with the rapid decline of European power, carried along towards independence in 1960 even those states in which mass parties have not yet emerged. That is to say the Northern Region of Nigeria, the Islamic Republic of Mauretania, and (with qualifications) Niger and Upper Volta are also single party systems, but based on parties of the 'patron', 'cadre', or 'personality' types. 1/ In Dahomey, however, there remains government by an unstable alliance of parties, both of the mass and patron types, still regional and not territorial in scale.

The pattern made by consecutive post-war electoral results in West Africa makes obvious another clear trend: the only sharp changes in party majorities took place prior to independence, and were from patron to mass party majority, but never the reverse. The exception was Ivory Coast, where the Parti Démocratique de la Côte d'Ivoire (PDCI) rode to power in 1946, immediately after Africans were able to organize parties legally. Between 1949 and 1952 they lost a series of elections and by-elections--but only because the French administration had tampered with the ballot.

1/ 'Patron' parties and 'parties of personalities' are terms employed by Thomas Hodgkin, author of Nationalism in Colonial Africa, Muller, London 1956. 'Cadre' party is used by Maurice Duverger in his Political Parties, Methuen and Co., London, 1954.

Officially, then, the candidates of the allied patron parties of Ivory Coast won, but the Parti Démocratique de la Côte d'Ivoire resumed its monopoly of offices as soon as the voters could register their choice freely once more.

Mass or patron parties

The main distinction between mass and patron parties lies not in the social origins of aspiring national leaders, and not in the scale of party organizations. It lies rather in the reply to the questions: How are the national leaders related to the rest of the population, and on what social groups and with what ideas and structures did they build their parties? The distinction is perhaps best seen first at the local branch level.

Mass parties generally sought the adherence of every single individual. They wanted to enroll every man, woman, and even child, and so they had to establish local branches with headquarters, regular meetings and elections for branch leaders. Examples are the Parti Démocratique de la Côte d'Ivoire or the Parti Démocratique de Guinée (PDG) of Guinea. The patron parties usually terminated their structure simply with the adherence of influential notables or patrons; these were most generally with the officially recognized 'chiefs' or their direct representatives. Examples are the Union Nigerienne des Indépendents et Sympathisants (UNIS) (x) 1/ of Niger, or the Northern People's Congress (NPC) of the Northern Region of Nigeria. Most patron parties did little to reach every individual in the community, and relied upon the 'patrons' for their local influence. A defection from the local branch of a mass party rarely led to the disintegration of its local organization. But the defection of a local notable from the patron party seriously weakened it in te locality. (The Northern People's Congress appears to be furthest along in the process of drawing all individuals to it, and therefore becoming a mass party.)

Mass parties, such as the Parti Démocratique de Guinée of Guinea, the Convention People's Party (CPP) of Ghana, the Union Soudanaise (US) of Soudan, the Parti Democratique de la Côte d'Ivoire of Ivory Coast, the Action Group of Nigeria and the National Council of Nigeria and the Cameroons (NCNC) counted their numbers in the hundreds and thousands. First organized around an anti-colonial platform, they claimed to "represent all the people; to embody the national will." 2/

1/ Parties indicated with an (x) have gone out of existence.

2/ Hodgkin, op. cit., p. 144.

Several structural concepts elaborated by Duverger and applied to Moroccan parties by Rézette 1/ can be usefully employed in connection with the tropical African parties. At least for a time, most mass parties were strongly articulated, relatively disciplined and called forth considerable direct participation from their members. The degree to which they did this varied, and is indicated in descending scale by the following order: Parti Démocratique de Guinée, Union Soudanaise, the Action Group of Nigeria, the Union Progressiste Senegalaise (UPS) of Senegal, the National Council of Nigeria and the Cameroons, the Comité de l'Unité Togolaise (CUT) of Togo, the Parti Démocratique de la Côte d'Ivoire. They emphasized party organization partly because they opposed the established authorities and could not use established institutions. Mass parties usually created parallel women's and youth organizations; they published newspapers, established central and regional headquarters, hired party staff, distributed membership cards, charged dues, and especially before independence, they synchronized activities and shared leaders with African trade unions. The more effective their organization, of course, the more mass party leaders were in a position to implement their decisions. Union Soudanaise and Parti Démocratique de Guinée leaders, for example, regarded their mass parties as "organizational weapons" 2/ designed to achieve independence and economic development with the greatest speed possible.

In contrast, most patron parties--Parti Progressiste Soudanais(*) (PSP) (*) and Union Africaine pour l'Indépendance et Sympathisants(*)--were weakly articulated, comparatively undisciplined, with little if any direct membership participation. This difference in structure between mass and patron parties is one of several reasons why although mass parties took the place of patron parties with a regularity suggesting a definite pattern, so far no mass party was ever replaced by a rival in free election.

Closely related to structure was the pattern of authority within the party. Not all but some of the mass parties had both institutionalized and collective leadership, such as the Union Progressiste Sénégalaise, the Action Group of Nigeria, the Union Soudanaise and the Parti Démocratique de Guinée. Elections were fairly regular; officers gave some account of their stewardship to the members; discipline was given serious attention; a predetermined procedure was followed for the making of important decisions. Patron parties, and a mass party such as the Parti Démocratique de la Côte d'Ivoire after 1952, had essentially personal leadership; leaders made decisions and reconciled conflicts

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1/Rézette, R., Les Partis politiques marocains, Colin, Paris, 1955.

2/Apter, David E. and Rosberg, Carl G., "Some Models of Political Change in Contemporary Africa", mimeographed, paper delivered at the September 1959 meeting of the African Studies Association.

in ways unfettered by pre-arranged rules, either as individuals or as a group. The parties with institutionalized leadership could deal far more smoothly with the problems posed by renewal and succession.

To an understanding of the authority pattern within the parties, a modified notion of charisma is sometimes useful,[1] provided it is not understood simply as "the polar opposite of formal and traditional bonds",[2] or taken to mean the total "absence of any defined hierarchy".[3] Thus some but not all mass party top-level leaders--Sékou Touré of the Parti Démocratique de Guinée and Mamadou Konaté (d. 1956) of the Union Soudanaise--enjoyed a type of charisma which was limited both by the constitutional procedure they themselves insisted upon within their mass parties, and by the power exercised to a greater or lesser extent by other groups and individuals within the party. Other leaders, particularly of patron parties--such as Fily Dabo Sissoko of the Parti Progressiste Soudanais (x) and Sourou Migan Apithy of the Parti Républicain du Dahomey (x) (PRD)--used their charisma comparatively unchecked by procedure, though limited by the power and influence of the 'patrons'. This was also true for some mass party leaders, such as Félix Houphouët-Boigny of the Parti Démocratique de la Côte d'Ivoire. Still other leaders, like Lamine Kaba of the Kankan region of Guinea, enjoyed charisma only within a locality considerably smaller than a territory. Their gift, usually recognized by only one ethnic group, came to be regarded as a threat to party discipline. The notion of charisma, insofar as it points out that in some instances divine qualities are ascribed to an individual, is a useful starting point for further investigation. It does not explain, but only restates the idea Carlyle expressed with "Find in a country the Ablest Man. . . . .raise him to the supreme place. . . . . .what he tells us to do must be precisely the wises, fittest. . . . ." [4]

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[1] Apter, David, The Gold Coast in Transition, Princeton University Press, Princeton, 1955.

[2] Weber, Max, "The Sociology of Charismatic Authority", From Max Weber, H. H. Gerth & C. Wright Mills, editors, Routledge & Kegan Paul, Ltd., London, 1952, p. 250.

[3] Worsley, Peter, The Trumpet Shall Sound, MacGibbon & Kee, London, 1957, p. 271.

[4] Carlyle, Thomas, "The Hero as King", On Heroes and Hero Worship, Ward & Lock Co., London, 1900, p. 262.

The distinction between mass and patron parties has implications beyond those already discussed--local branch organization, size of membership, patterns of authority, and structure. It illuminates also variations in social composition, methods, and function. Before these points are taken up, however, it is necessary to look somewhat more closely at the total society in which the West African parties sought support.

Modern and Traditional

The West African societies in which ten new sovereign states emerged between 1957 and 1960 were at a far earlier stage of economic and social history than the retiring colonial powers. Specific figures illustrating this are less reliable than the generalizations they are designed to illustrate. As a result of the reforms extended after the Second World War, the vote became universal in a society where--on very rough average--fifteen per cent could read or write, perhaps three per cent were regular wage earners, and another three per cent employed away from their villages. Considerably more than half the people's efforts still went into subsistence activity outside the exchange economy. 1/ In Europe, by contrast, the vote became general only after almost everyone was deeply involved in the market economy. Indeed, not even the middle classes could vote until after the emergence of the "commercial civilization from the feudal, the society based on contract from the society based on status". 2/ Not so in West Africa. Although there is an educated elite--mainly clerks, teachers, nurses, doctors, lawyers, and low-level technicians--only in Senegal, Ivory Coast, Ghana, and Southern Nigeria is there a growing minority of literate Africans, self-employed in trade, transport, and farming for export.

Several hundred different ethnic groups make up the approximately sixty million inhabitants of the new West African nations. The educated minority is almost alone in seeing a clear interest in maintaining the present territorial frontiers, or in enlarging them, and in preventing tribal separatism from fragmenting the new nations. With a few exceptions, the existence of this elite, their size and even their distribution according to ethnic and geographic origins, were due to the forces of economic and social change accompanying the arrival of the Europeans in West Africa. Much more economic activity took place in the coastal and forest belt of West Africa, and the proportion of people educated from that region is far greater than from the savannah and

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1/See the very excellent tables in Elliot Berg's, "The Economic Basis of Political Choice in French West Africa", American Political Science Review, June 1960, esp. Table I on p. 393.

2/Clark, Colin, The Conditions of Economic Progress, Macmillan, London, 1951, p. 567.

sahel belts. This caused trouble both for parties and for nations. Northern Nigerians, Ghanaians, and Ivory Coasters, for example, resent having too many party organizers, too many civil servants, and too many government leaders come from the southern regions of their countries. Some seeds of the 1958 riots against Dahomeans on the Ivory Coast were planted before the war, when the French West African educational system trained an unusually high proportion of them.

It was, however, the political facts of colonial rule, and then the democratic reforms extending over some two decades, which sped up the process whereby the modern layer of African society acquired the lead politically, even though it was still so small a minority. The European powers enlarged the scale of West African political units from many tribal to the present territorial ones. Together with their new technology they introduced, whether by intention or not, new secular values, such as equality and merit, instead of traditional religious sanction, and they overthrew heredity as the main determinant of rank. Although the British believed in indirect rule and the French in direct rule, to varying degrees they undermined the secular authority of the pre-European authorities.

There were few areas in which the presence of the Europeans did not add yet another dimension to the already thorny issue of succession. Pre-war 'native authorities', or members of the commandement indigène--the official 'chiefs'--did not necessarily also have a traditional claim to high rank. These categories seem to have overlapped most in the savannah region of the western Sudan, where such historic pre-European empires as Mali and Ghana existed, and where in the nineteenth century the Europeans could not install their administrations until they had defeated the warrior-kings: Samory and the sons of Hajj Umar Tall. But the official 'chiefs' were not regular mobile civil servants, since they were not recruited by standards of merit. Few were literate, and they were for the most part stationed among their kinsmen. In time, these official 'chiefs' constituted a new stratum of the population in the countryside, and they had a sense of corporate identity transcending the limits of their different ethnic groups. They were aware that the post-war reforms affected the "prestige of the chiefs, precedence, deportment, decoration, housing, salaries." 1/

This awareness had developed farthest in northern Nigeria, in Soudan, Niger, and the plateau and savannah regions of Guinea.

1/From the electoral manifesto of September 5, 1945, issued by Parti Progressiste Soudanais leader, Fily Dabo Sissoko.

It became the basis for the more successful 'patron' parties, including those now behind the single party governments of Northern Nigeria, Niger, and Mauretania. In Soudan and Guinea also, the patron parties which won in the post-war elections until defeated, in 1956, by the Union Soudanaise and the Parti Démocratique de Guinée mass parties respectively, were based on these 'chiefs'. It was therefore in these territories particularly that the struggle against the colonial power barely masked another struggle, most acute in the countryside, between traditionalists and modernizers. In Soudan and Guinea the mass party leaders, as soon as they were in a position to do so, consolidated their electoral victory by doing away altogether with the official 'chiefs' and replacing them with regular civil servants, advised by elected village councils. In Niger and Northern Nigeria, however, the challenge to the 'chiefs' although already offered by the respective mass party oppositions--Sawaba and the Northern Elements Progressive Union (NEPU)--has not yet been successful.

Already before the war, educated Africans rather than traditional or official 'chiefs' were increasingly sought out by their kinsmen to help them settle controversies with the Europeans and their laws. After the war, by the order in which they came as well as by their content, the reforms in West Africa facilitated the assumption of the political initiative by the educated elite. (The recent history of the Congo illustrates, by contrast, the importance of this by-product of a reform phase preceding total independence.) In West Africa, the colonizer and the Africans took for granted that Africans elected to post-war representative posts would know how to read and write in English or French--if only to talk to the Europeans who had promulgated the reforms. Moreover, in most territories the franchise was initially weighted in favor of those groups able to identify themselves in the records kept by the colonizing power--which meant the literate, those significant in the money economy, mainly the people in the regular civil service, and only to a lesser degree those recognized as candidates for official 'chief'. These reforms gave the educated group legal channels for organizing the expulsion of the Europeans. This was the elite which had reason to want to. Most of them lived in towns, they saw Europeans more often and were most affected by discrimination--racial, cultural, social and professional --which characterized the pre-war colonial system.

The post-war reforms further strengthened the position of the educated elite by synchronizing political developments in areas of unequal political pressure, and by forcing even those traditional leaders who could still count upon the following of their ethnic groups, as in Mauretania or Northern Nigeria, to select educated 'front men' for the new elective offices.

Moreover, because the reforms extended over approximately two decades before full independence came, aspiring leaders had time to build records as nationalists, to champion opposition causes in the countryside, to build parties, and so anchor their authority to some degree. Nationalism gave the educated elite a powerful theme: that of making all Africans once again masters in their own land. With a few exceptions this educated elite, rather than the traditional aristocrats or official 'chiefs', got the credit for expelling the European colonizers.

Major or minor parties, mass or patron ones, these education men staffed them. They provided the candidates for the new government offices after the war, they took the seats in legislative assemblies, in cabinets, and public corporations; they filled the senior civil service posts. A majority of these men were the first generation in their families to read or write a language other than Arabic. They had been trained in schools designed to produce only subordinates for Europeans in that phase of colonial history when all senior posts were reserved for Europeans. Most were only primary school graduates, a minority--larger in English-speaking Africa, which was richer, than in French-speaking Africa--went to secondary school, and only a tiny number graduated from universities.

Since most university places only opened up to West Africans after the war, there were very few graduates available to take the first offices. The vast majority of these were in the peculiar position of having to content themselves with second-level posts, usually in the civil service, under African ministers who were often the same age, but who had failed the secondary school or college entrance examinations, which had left them free to take part in the crucial first years of post-war political activity; and so they were 'founding fathers'. The mass franchise, in effect, added yet another reason why, for the modern elite, the standards of success in the schools of the Europeans were often the reverse of the standards of success in African elections. Under the pre-war conditions of total European control the most educated generally acquired the highest of the subordinate offices open to Africans. But after the war, when the voting villagers became arbiters of power among competing members of the elite, often those with primary school education spoke the language of the people and had the reactions to which the villagers responded.

While the state schools helped weaken ethnic and historic antagonisms, they also created new cleavages among the educated elite, which in some territories acquired some political significance. For example, in post-war Guinea, most of those who had been pre-war students in the dominant French West African secondary

school, the École Normale William-Ponty, wanted to keep the only paying jobs open to them. These were invariably in the civil service and so they had little alternative, prior to 1956, but to go into 'administrative' parties. Most of them joined one of the officially preferred regional patron parties. The mass party in Guinea, the Parti Démocratique de Guinée, was led by products of the lower state schools, who accused Ponty graduates of 'betraying the masses', and called them 'valets of the administration'. In Gold Coast, also, political and educational cleavages were to some degree superimposed when the 'Standard VII boys' led a radical breakway from the more highly educated leaders of the United Gold Coast Convention(x) (UGCC) and built the Convention People's Party. In Ivory Coast, by contrast, Ponty graduates took the lead both in the regional 'patron' parties, and in the mass party--the Parti Démocratique de la Côte d'Ivoire. There Ponty graduates found alternatives to administrative employment in cocoa and coffee farming. Consequently in Ivory Coast political cleavages did not relate closely to differences in the diplomas achieved by members of the elite.

Among the elite there are other points of cleavage than those derived from differences in level of education. Differences of generation also made for division, such as those which divided the Senegalese leaders of the Bloc Démocratique Sénégalais(x) (BDS)[1] from those leading the Senegalese federation of the Section Française de l'Internationale Ouvrière(x) (SFIO);[2] or dividing the young organizers of the Convention People's Party from the older leaders of the United Gold Coast Convention.(x) There are differences also in ideology: Marxist-inspired for the Parti Démocratique de Guinée and the Union Soudanaise; a blend of Catholic and socialist political doctrine for many leaders of the Union Progressiste Sénégalaise. These differences are sharpest in the minor parties organised by university trained graduates: Trotskyist-inspired for some leaders of the Parti du Régroupement Africain (PRA)--Sénégal; close to orthodox Communism for the leaders of the Senegalese Parti Africain de l'Indépendance (PAI); an Africanised version of Emmanuel Mounier's French Catholic social doctrine for those participating in the Mouvement Africaine de Libération Nationale (MLN). There were also differences in status, distinguishing in Sénegal, for example, the pre-war privileged 'citizens' /Section Française de l'Internationale Ouvrière(x)/ from the 'subjects' /Bloc Démocratique Sénégalais(x)/; the former had earlier access to education, more wealth often from the peanut trade, higher jobs in the civil service.[3]

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[1] Forerunner of the Union Progressiste Sénégalaise.

[2] Both groups merged with the Union Progressiste Sénégalaise.

[3] For further details, see Kenneth E. Robinson's excellent chapter "Senegal" in Five Elections in Africa, edited by him and W.J.M. Mackenzie, Oxford, at the Clarendon Press, 1960.

These differences within the modern elite were balanced, however, by a certain common outlook. They conceived of themselves as Africans rather than Ashanti, for example. Their common experiences in schools, jobs, and in the money economy, in pre-war town associations, and with colonial administration gave them a homogeneity. But no such common outlook linked all the elite to the mass of the population. There was, instead, a gulf, greatest, of course, among people several generations or several decades removed from the village--the 'citizens' of Senegal, for example, or many of the French or British trained university graduates. Africans building parties to bridge this gulf after the war had to do so among peoples 80% of whom were ignorant of French or English. Yet these were the languages in which the modern constitutional decisions were being taken, including the universal franchise. Few had ever been to a large town and most had never lived in one; almost all handled money rarely and lived far from roads or railroads. The African organizer who came into a village to solicit votes was at the same time a transmitter of news of a modern world. This world was symbolized by the airport located perhaps fifty miles from the village, if the distance is reckoned in physical mileage, but if the distance is plotted against the timetable of European economic and social history, then several hundred years away.

Grass roots politics are different from national politics in most parts of the world. The difference is particularly great in Africa, for several reasons. There are very many ethnic groups of varying types. Very few people are members of the educated elite, and these are disproportionately distributed over the most important ethnic groups and regions. There is a large gap between the traditions which inspired the formal governments of the new nations, and the pre-European institutions. Most people continue to relate themselves to political parties through a 'screen of kinship', a fact which has made it necessary for all successful parties--mass or patron ones--to develop skill in 'ethnic arithmetic' when selecting leaders and candidates. This is at the core of how the new African parties perform the important work of social integration, and is explained more fully in the next section.

The Integrating Function

In illuminating the function of the parties, the mass patron party distinction again has meaning. Patron parties like Union Nigeriénne des Indépendants et Sympathisants (*) of Niger fulfilled but the minimum tasks assigned to parties by the formal institutions. With the possible exception of the Northern People's Congress, these parties were interested in the individual only

insofar as he happened to be included in the franchise, provided candidates for election and the minimum machinery for bringing the voter to the polls. Patron parties made relatively few attempts even to perform the function of political educator, and explain the context of the post-war reforms to the population.

By contrast, the functions of mass parties such as the Parti Démocratique de la Côte d'Ivoire, the Parti Démocratique de Guinée or the Union Soudanaise, the Convention People's Party of Ghana or the National Council of Nigeria and the Cameroons and the Action Group of Nigeria were far more complex and varied. On occasion, prior to acquiring government responsibilities, mass parties disregarded, indeed replaced the existing legal institutions. To the extent that they for a time substituted, or proposed to, their structure for that of the state--that they developed their own ways of administering justice or of keeping order--these parties filled a revolutionary function. (None, however, waged guerrilla war in West Africa.) For some time mass parties, far more than the legal institutions conceived in London or in Paris, were considered to be legitimate by the population. By agreeing to work at least partly within the post-war representative institutions, therefore, these parties legitimized them, rather than vice-versa. Coincidentally, these parties acted as national 'melting pots,' educating people as Africans. To the extent that they provided a new social framework for people no longer firmly rooted in a stable ethnic tradition, they can be termed "parties of social integration". 1/ They and their cultural affiliates were interested in everything from the cradle to the grave--in birth, initiation, religion, marriage, divorce, dancing, song, plays, feuds, debts, land, migration, death, public order--not only in electoral success.

How the mass parties performed this integrating function was very closely tied to the 'ethnic arithmetic' and 'status arithmetic' evident from an analysis of the modern and traditional status and ethnic origins of national and local leaders. This analysis is particularly important, since the process by which independence was achieved in West Africa gave occasion not only for shifts in the distribution of power between Europeans and Africans, but also within African society--between modern and traditional elite, within each of these groups, and in the links connecting them with the mass of the population.

This process is perhaps best approached with the relatively simple question--what group or sub-group predominated in

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1/ Neumann, Sigmund, Modern Political Parties, University of Chicago Press, Chicago, 1956, p. 404.

the major parties? Trade unionists predominated within the Parti Démocratique de Guinée and were of great significance in the Union Soudanaise and the (outlawed) Sawaba mass party of Niger. African planters formed the Parti Démocratique de la Côte d'Ivoire, and persons associated with the cocoa export trade were influential in the Action Group of Nigeria. The educated former 'subjects' constructed the Bloc Démocratique Sénégalais(x) to challenge, in effect, the 'citizen'-led Socialists. All these dominant groups were in the modern categories of the population, a feature all mass parties had in common and shared with but those few 'patron' parties based on a pre-war town elite.

More difficult to discover was who predominated in those patron parties resting on important village personalities. The distinction between mass and patron parties, already made in relation to local party structure, was less neat in fact than in definition. When first organizing, aspiring mass party leaders did not disdain to accept the backing of a local important personage--an official chief, a traditional aristocrat, a Muslim marabout or animist sage. But partly because most mass parties were born after the war as anti-colonial "congresses",1/ local important personages in West Africa connected with the colonial establishment usually held aloof until the mass party was itself becoming the establishment. Then many "shifted their rifles from one shoulder to the other".2/ Most important local personages which became identified with the mass parties during the height of the independence struggle--la lutte contre l'impérialisme--had special local reasons for lining up against the colonial administration, usually connected with a quarrel over prestige or property. Many rivals to the 'chiefs'--at village or regional level, joined the mass parties at an early stage. However, when such a personality became included locally within the mass party, the methods of the mass party worked to reduce his local influence, to make of him but one among many.

Where there was a modern urban class, also identified both for cultural and economic reasons with the colonial power, they too hesitated before becoming associated with the radical, anti-colonial mass parties, usually initiated by younger, less educated men, less acceptable to the Europeans. The clearest examples of this were in Senegal and in Gold Coast (Ghana). The

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1/ Hodgkin, op. cit., p. 144.

2/ Kefta, Madeira, "Le Parti unique en Afrique", Présence Africaine, Fevrier-Mars, 1960, p. 20.

pre-war 'subjects' shortly after they acquired the vote in 1945, broke from the 'citizen'-dominated Section Française de l'Internationale Ouvrière(x) of Senegal to organize their Bloc Démocratique Sénégalais(x). Similarly in Gold Coast the younger, more radical men broke from the United Gold Coast Convention(x) to organize the Convention People's Party.

Thus in some areas, in spite of their many differences, a pre-war town elite holding the highest positions permitted Africans in the colonial system, and the official 'chiefs' already conscious of the fact that the presence of the Europeans stabilized their position, made common cause, in patron parties against mass party leaders. This process, in which 'haves' lined up against their 'have not' challengers was evident from the epithets exchanged at election time. Urban patron party leaders called mass party leaders "vagrants" (Guinea), "veranda boys" (Ghana); in the country-side patrons underlined that their rivals were "slaves" or "strangers". Mass party leaders, for their part, hurled labels like "valets of the administration" or "union of featherbedders" at the patron party leaders.

In varying degrees, the nationalist struggle helped stir up 'loyalty' issues, national and local, in African politics, with as a frequent result yet another cause for disintegration in an already fragile society. For where they could, those lower on the traditional or modern social scale used the issue of nationalism to strengthen their own position through the mass parties. And those with privileges to lose, as in Niger or Nigeria, showed signs of preferring rule by the Europeans to rule by the talakawa (commoners in Hausa). Especially in the country-side, showing loyalty to the mass party, when it was under pressure from the colonial power, was one way to compensate for a weak claim to belonging to the local ethnic group--for immigrant dioula ('strangers') in Ivory Coast, to show they were as loyal, for example, as the originaires who first came to the area.

Given the low percentage of educated elite in relation to the rest of the population, and the fact that both in mass and in patron parties a network of kinship connects leaders and followers, it follows that leaders of both mass and patron parties which are territorial in scale have gone through the first and simplest stage of 'ethnic arithmetic': they kept a rough correspondence between the ethnic origins of leaders and followers. This correspondence is at least as important in African as in Boston or New York City politics. Defeating a patron party which has not been through this first stage, was relatively easy for mass party leaders--as when, for example the Bloc Démocratique Sénégalais(x) used 'favorite sons' in the Casamance region of Senegal, to defeat the Section Française de l'International Ouvrière(x) which was locally (as territorially) dominated by

Wolof and Lebou from Dakar or Saint-Louis. Leaders who tried to build national parties failed when they did not have among their ranks representatives of the most important ethnic groups. The Socialist party of Guinea was in this category. It grew from the Fulani club at the École Normale William-Ponty and never really succeeded in broadening the ethnic base, even though it underwent several important changes, from ethnic to a nationalist ideology. Too many of one ethnic group, too few of another, caused difficulties for any party. The Parti Démocratique de la Côte d'Ivoire had relatively little trouble with ethnic separatism from the Baule, while the Convention People's Party had considerable difficulty with the Ashanti; these two ethnic groups, traditionally related, occupy similar geographic and numerical positions in their respective states, and produce most of the coffee and/or cocoa and so have the most wealth of their countries. But the Parti Démocratique de la Côte d'Ivoire from the beginning had Baule associated with it, through the person of their Baule leader, Félix Houphouët-Boigny, while in Ghana the Convention People's Party started and remained under-representative of the Ashanti.

While patron parties leaders, once through this first simple phase of 'ethnic arithmetic,' generally stopped their deliberate calculations there, the leaders of mass parties had but begun. They tried to use their party organizations in order to change their society and awaken a wider, national sense of community. They appealed to social categories existing within, or in addition to most ethnic groups--a technique suitable to recruiting in a mobile, changing society. Youth and women were of course two such categories, and mass parties emphasized these heavily. It has already been pointed out that in many villages mass party organizers went to rivals of official 'chiefs'; from these they discovered local grievances. They often appealed to rural underprivileged groups. For example, the Parti Démocratique de Guinée first gained a following in the Fouta Djallon plateau not among the Fulani majority, but rather among their 'captives' living in the ancillary villages (roundé). They appealed to rural scribes, whose modern skills set them apart. There were those who had travelled, often 'strangers' who were among the most recent immigrants to a flourishing agricultural area. In some areas they went to veterans--in Ghana, for example, and in Senegal. There were religious dissidents--Harrists in the Ivory Coast, Mamadists in Soudan. There were in some areas Muslim proselytizers opposed by the 'chief'--either because he was animist, or because though Muslim he nevertheless felt his secular position under attack. There were camel drivers, chauffeurs, transporters, and peddlers--such as the dioula traders of Western Upper Volta, Soudan, Guinea, and Ivory Coast, or some 'Hausa' traders of Ghana and Nigeria. (Many of these in fact came from families with a tradition as middle-men in the trans-Saharan trade before it declined under trans-Atlantic competition.) And, of course, there were those

who earned money income for growing coffee, cocoa, peanuts or bananas, became restless with tradition; then young men no longer listened to the old, women made money trading in the marketplace, and people responded to the appeals against established authorities made by the mass party organizers.

Of course, these groups, belonging in some degree to trans-ethnic social categories, were still in a minority, and they wanted party leaders of roughly similar origins to their own. Even while disclaiming allowing ethnic considerations to enter into their selection of leaders or candidates, mass party leaders were still well aware they needed associates physically related to those they sought as followers. Indeed, conflicts among ethnic groups were often sharper in mass than in patron parties, since mass parties made a continuous attempt to propagate modern values and diminish the weight of ethnic exclusiveness. For example, since their 1956 victories, both Union Soudanaise and Parti Démocratique de Guinée leaders had the habit of deliberately scrambling the ethnic origins of party propagandists and their audiences. Man from the Guinea coast campaigned in the forest and Fouta Djallon; men from Upper Guinea in the forest. All these tactics had the purpose of encouraging people to relate themselves directly to the party, rather than through 'a screen of kinship'.

Conflicts between modern and traditional leaders, moreover, were also often sharper in mass than patron parties. No doubt the traditional upper-class standing of Sékou Touré or Modibo Keïta, for example, was important for the high popular esteem given to them. The Parti Démocratique de Guinée began to make headway among the Fulani after Diallo Sayroulaye, the son of an important Fulani chief, "like La Fayette. . . . .left his privileges to join the democratic cause." 1/ Félix Houphouët-Boigny, in the militant years of the Parti Démocratique de la Côte d'Ivoire prior to 1952, used his prestige as chief, and not only as a doctor and wealthy planter, in order to entrench the Parti Démocratique de la Côte d'Ivoire in the countryside. On the whole, they used their mobility to preach equality.

Of the entire national leadership of patron parties, the dominant majority is of traditional upper class status; while the majority of the mass party national leadership is of commoner origin. But while mass parties have a high proportion of people with high traditional status as the first among party leaders, or prime ministers, patron parties have an exceptionally high number of prime ministers, or officials holding the first post in the modern institutions, with low traditional status. (Is the spirit in which 'chiefs' do this reminiscent of their habit, at the turn of the century, to send not their own but sons of slaves to the schools of the Europeans?) Alhaji Abubakar Tafawa Balewa

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1/ La Liberté, Parti Démocratique de Guinée newspaper, December 22, 1955.

the Northern Nigeria designated by the Northern People's Congress to become Prime Minister of the Federation of Nigeria, is of low traditional status. So is Joseph Conombo, who was until 1956 deputy to the French National Assembly from Upper Volta, elected through a patron party based on the Mossi chiefs. So was Yacine Diallo (d. 1954), Guinea deputy to the French National Assembly representing the then dominant patron party alliance, and more specifically the Fulani chiefs. So is Hubert Maga, Prime Minister of Dahomey who represented a regional patron party strong in Northern Dahomey. It is as if 'princes' fear least the competition of 'captives'; while villagers, first hearing equality preached, learn fastest from 'princes'.

Thus within mass parties, not only ethnic origins but also ethnic status continue to count, often causing more conflict precisely because it is usual mass party ideology to ignore or challenge these differences. Yet men with high modern but low traditional qualifications--Ponty graduates of griot 1/ descent, for example, lawyers descended of 'captives'--were rarely chosen by local mass party branch members as candidates for elective office. In varying degrees, mass party national leaders usually maintained a continuous pressure in favor of such nominations, as of West Indians and other 'strangers', to prove they believed in equality. (Precisely so as to be able to maintain this pressure, mass party leaders often preferred multi-member to single-member constituencies in legislative assembly elections. Where ten seats were to be filled, local branch members were more inclined to accept that headquarters designate some candidates, than where only one seat was involved.) Though they tried much harder than patron party leaders, mass party leaders did not always succeed in avoiding institutionalizing ethnic differences. In the long run, friction among ethnic groups in Ivory Coast may have been intensified by the Parti Démocratique de la Côte d'Ivoire's decision to organize local branches on an ethnic, rather than a neighborhood principle. This distinguished the Parti Démocratique de la Côte d'Ivoire local structure from that of most other mass parties. The Union Soudanaise, the Parti Démocratique de Guinée, and the Union Progressiste Sénégalaise, for example, made strenuous efforts to mix ethnic groups at the local level--and did so at least to the extent that neighborhoods did. The Parti Démocratique de la Côte d'Ivoire's decision was a recognition of the way people actually communicated in Ivory Coast, a concession to reality, unwillingly made by many educated leaders because they knew they might need to assemble their followers rapidly. (This practice was challenged

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1/ Traditional caste resembling medieval troubadours.

by a Parti Démocratique de la Côte d'Ivoire Congress resolution in 1959, as yet unimplemented. 1/

The various methods used by mass and patron parties further illustrate the differences between them. Patron parties adopted methods respectful of established authority. They rarely called mass meetings and prior to 1957 generally avoided the techniques of protest, offered few if any personal services to supporters, were little concerned with party symbols. The mass parties, prior to achieving government majorities, employed techniques related to their revolutionary, legitimizing, educational and social integration functions. Demonstrations, strikes, boycotts, occasional violence were revolutionary techniques. The parties paid considerable attention to the creation of new national symbols: insignias, colors, slogans, party cloth for women to wear. The Action Group of Nigeria even hired American public relations advisors. Mass party choices of symbols and slogans were based on sound insight into popular responses, and repetition is at the heart of African oratory, as of drumming and dance. 2/ "Vote the elephant; he is wise and never forgets." The Parti Démocratique de Guinée and the Parti Démocratique de la Côte d'Ivoire painted the elephant on walls and roofs and streets and cars. In the savannah, however, the Union Soudanaise never made much of the fact that the elephant was its symbol also; for there Union Soudanaise opponents said, with effect "the elephant eats your crops and leaves you destitute". The Action Group of Nigeria adopted the palm tree as its symbol of the "life more abundant". Elaborating on the meaning of the Bloc Démocratique Sénégalais(x) party colors, Leopold Senghor of Senegal wrote "Green is for the Muslim majority, the color of the Prophet's flag; green is for the Christian minority, the color of hope; green is for the animists, the symbol of youth and the irrepressible force of Black Africa". 3/ And using the elimination of forced labor to their ends, aspiring mass party Union Démocratique Nigeriénne (x) 4/ leaders in Niger whose ballot carried the picture of a camel, warned people not to vote for the patron Union Nigeriénne des Indépendants et Sympathisants(x) party which had a

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1/Abidjan-Matin, June 18, 1959.

2/Unless otherwise indicated, I recorded the citations in my field work.

3/Condition Humaine, /Bloc Démocratique Sénégalais(x) November 30, 1948.

4/The forerunner of Sawaba.

yellow ballot bearing the picture of a stick and a basket. "Vote for the camel, and you will be as free as he", they said, well acquainted with that ornery beast. And they added, "The yellow ballot is a stick and a basket; if you vote for it forced labor will come back." The Northern People's Congress made salama 'peace' its slogan. Prayers were often connected with party ceremonies, and no libation was poured in connection with Convention People's Party and Parti Démocratique de la Côte d'Ivoire meetings, or the Fatiha (opening stanza of the Koran) was solemnly intoned prior to some Parti Démocratique de Guinée meetings.

Personal oratory was one of the most effective educational techniques. Campaigning against the Guinea regional patron parties during 1954-6 Sékou Touré explained, "I am Diallo the shepherd from the Fouta, I am Mamba the planter from Nzérékoré, Keïta the rice grower from Siguiri, Soumah the fisherman from the coast, I am African, I am every man." Both because they believed it, and because the 'important people' in the countryside opposed them, most mass party organizers preached equality. "Vincent Auriol and Lamine both die if they go hungry." or "three men want to go to Bamako. The governor goes by plane, Mamba by bicycle, Yacine on foot. Who arrives first?" "The governor" shouts the crowd. "Next?" "Mamba." "Then?" "Yacine." In such dialogues leaders communicated the idea that the environment accounts for most human differences.

The identification of the mass party with the community before independence was emphasized not only by party sponsorship of dances, festivals, songs, receptions, by party organization of weddings or funerals, but also by the existence of an informal party social security system which resulted in support for indigent partisans, legal advice for imprisoned militants, payment of medical bills for the sick, food and housing for families of party widows or grass widows, as well as automatic hospitality for party-sponsored travellers. On occasion the mass party could count on free labor even for the construction of bridges, roads and schools--on popular good will that the Parti Démocratique de Guinée and Union Soudanaise leaders termed human investment--investissement humain--and included in their inventory of economic resources.

Single or Multi-Party Systems

The nationalist struggle strengthens the position of the educated elite in still largely traditional societies, and encourages the elite to knit into mass parties the forces for

change and dissent, both traditional and modern. There is not yet evidence to show that the trend from mass to patron party majority would continue after independence. Of course, the distinctions between--and among--mass and patron parties turn on differences in degree. Some parties fall between the two categories. Is the Parti Démocratique de la Côte d'Ivoire, for example, losing its mass party characteristics and becoming a patron type? The efficiency of its organization has declined, so has its interest in social equality; there have been many signs of rising discontent; it has been increasingly unable to cope with ethnic separatist pressures. Or is the Northern People's Congress, because of its growing emphasis on mass recruitment, edging towards the mass party type? Nevertheless, the distinction has validity. I do not claim the adjective 'democratic' characterizes single party systems resting on patron parties. Indeed, many government of underdeveloped areas resting on one or more patron parties, unable to cope with the centrifugal forces which emerge after independence, have changed into military dictatorships. To this I prefer patron party systems, specially if they make it possible for mass party oppositions to exist.

There are many reasons, however, to accord the adjective democratic to the single party systems in West Africa which are based on mass parties likely to dominate for some time. There is, first, the effectiveness of mass party organization. Direct democracy is impossible except at the level of the village--whether in New England or the region of Banfora. Mass parties, at their best, have developed the organization with which they publicize issues and encourage mass discussion of important issues. Local branches involve the many rather than honor the few, and mass party leaders try to break through traditional organizations and reach individuals. They are often more effective in doing this than the civil service. The procedures followed within many mass parties are prerequisites in the working of a modern democratic system. Leaders are chosen by voting. In the most thoroughly organized mass parties, institutionalized leadership was also collective. Predetermined procedures were followed for the making of decisions which popularized the modern idea of the rule of law subject to revision. The mass parties helped legitimize the procedures and institutions of the new states.

Mass party states can be considered democratic, in the second place, to the extent that they encouraged social equality. The modern elite, themselves in favor of such values as merit rather than birth as the determinant of rank, were in a stronger position in the mass party states. Moreover, most mass party leaders rose from lower positions both in the modern and the

traditional social scale, and used their new power in favor of social equality. Of course, to bridge the gap between the educated and the mass of the population, all parties had to use both ethnic and status 'arithmetic'. Unlike patron party leaders, however, mass party leaders used this in order to weaken and reduce traditional ethnic and status differences.

For a third reason it is possible to call mass party based states democratic. They reflect the 'general will.' There was at least a brief period in mass party states, when the territorial and party communities were indistinguishable. This was usually just prior to taking over responsibility for governing, but after mass party organizers had used to advantage being in opposition. Discontent was their common denominator. Typical of the instructions national mass party leaders gave to local leaders were "Go and talk to the peasants in the field." "Tell Abdoulaye his daughter cannot be forced to marry the old chief." "Tell the peasants not to sell their crops at that ruinous price." "Defend Pango's palm trees against destruction by the administrator." "Speak up for Binta's right to cultivate the land the chief claims." While not all the questions were settled, villagers found a national platform in the mass party which they had never known. Mass party organizers sought out grievances, expressed them in the marketplace, coordinated them. They blamed European rule with forced labor, taxes, abuses of official 'chiefs', racial discrimination, poverty. Out of these grievances they welded their massive demonstrations against colonial rule. Most patron party leaders were too linked with the established authorities to play this muckracking role.

Muckraking paid. Mass party membership was open to all, and practically all sought to acquire it--a characteristic at the level of recruitment which distinguished West African states based on the mass party, from states based on single parties confining their membership--as most fascist or Communist parties do--to but a chosen few. The widespread influence and number of followers of the mass parties at the height of their success, their national character long before the institutions of government were controlled by Africans, their success in acquiring the credit for the national revolution--all these bore out the mass party claim to represent the entire population. This helps explain why many West African mass party leaders saw little contradiction between claiming to be democratic, and insisting on the existence of but a single, mass based party. It is the African version of that "sole and central power which governs the whole community, by its direct influence," 1/ de Tocqueville

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1/ de Tocqueville, Alexis, Democracy in America, O.U.P., London, 1952, pp. 550-51.

observed in the nineteenth century American idea of the state.

The fourth reason to call mass party based states democratic is related to the integrating function of the mass parties. Among the elite, there is enough consensus about the rules of the political game to make it possible for them to disagree without coming, too often, to blows. After all, in pre-war Senegal, as in nineteenth century Britain or present Southern Rhodesia and South Africa, the vote, and controversies among the several parties remained confined to a few who speak the same language and fight for similar interests. In the long run, however, in Africa there is a greater threat to democracy from restricting the franchise to a privileged few, than from the existence of but a single party. At the present stage of African social history, the mass party organization makes it possible for people to disagree within it, without necessarily triggering incidents endangering the rule of the elite and the stability of the state. Confining disagreements to the issues at hand-is difficult in a society where only the members of the elite born of different ethnic groups are able to speak directly to each other in French or English. Even where the organization of a mass party is a "spider's web,"[1] villagers often have different ideas than national leaders. Sékou Touré spoke of this to the fifth Congress of the Parti Démocratique de Guinée in September 1959:

> . . .democracy, within our Party, is not a democracy of clan or family, but a basic democracy to whose action the entire population contributes directly and freely. . . .the old forms of social democracy anchored in the villages often influence the militants, who believe themselves authorized to violate the new individual forms prescribed within the PDG. Therefore at each new election for officers, dissensions arise within the Movement. This occurs because we have not yet accomplished our work. [2]

As long as kinship links the educated and their rural constituents, divisions among the elite--on such constitutional matters as federalism, independence, or the position of 'chiefs'--is often taken by their kinsmen as a signal for settling entirely unrelated

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[1] The term is frequently used by Union Soudanaise secretary general, Modibo Keita.

[2] Official Report, Conakry, 1959, pp. 43-4.

traditional issues over land, women or water. This was the dynamic behind the Kumasi riots which accompanied the Convention People's Party-National Liberation Movement(x) (NLM) controversy about constitutional matters in 1957 and 1958. The same dynamic helped to explain the Ivory Coast incidents of 1949-1952. In the relatively integrated societies of North America or Western Europe, plurality is quite rightly counted among the democratic virtues. In Africa today, it is rather a vice.

The fifth reason why single party states based on the mass party can nevertheless be called democratic is that a national emergency exists. The struggle for independence is "not the concern of a day, a year, or an age; posterity are virtually involved in the contest...." 1/ The words are Tom Paine's, but the sentiments reflect the African sense of history.2/ Africans argue the plural "party-system under imperialist domination is synonymous with a sterile division that profits only those who want to see to it that their privileges continue." 3/ This is the logic of a community at war, considering an administratif to be like a 'quisling'. Most Africans carry their sense of urgency into the post-independence era, and consider unity necessary in order to rapidly "install the apparatus of the State, at the service of economic development, of social and cultural development." 4/

Single party states thus strengthened the democratic process in Africa, but there are also present forces weakening that process. How does a mass party continue to reflect the 'general will' after independence? The full responsibilities of government have already brought out centrifugal forces--opposition within the mass parties, from its youth, labor and traditionalist affiliates. There have been signs of ethnic separatism, particularly

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1/ Paine, Thomas, "Common Sense" in The Political Writings, Vol. 1, Investigator Office, Boston, 1856, p. 33.

2/ For a most interesting discussion of the new history of West Africa, see Wallerstein, Immanuel, paper delivered to the 1960 meeting of the American Sociological Association, "The Search for National Identity," mimeographed.

3/ Adandé, Alexander, "In the Phase of National Reconstruction the Fusion of Parties Becomes a Categorical Imperative," address at the Congress for Cultural Freedom Conference, Ibadan, March 1959, mimeographed, F/413, p. 3.

4/ Madeira Keita, op. cit., p. 9.

on international frontiers. Rural friction intensified between 'strangers' or dioula and the original owners of tribal lands. It appears, as Thomas Hodgkin claims, that the logical consequence of self-determination is anarchy. Yet perhaps even a greater threat to democracy is the fear of anarchy, making new African governments as quick to pass a Preventive Detention Act as was the United States to adopt the Alien and Sedition Act.

What opportunity is there within the present mass party states to express disagreement? This varies. Within the mass parties the greatest opportunity appears to exist in the best organized ones. So far discussion is widespread and frank--within the Parti Démocratique de Guinée and the Union Soudanaise for example--and leaders have on many occasions been outvoted on important issues. Not only individual disagreement is possible within these mass parties, but also organized disagreements by tendencies--such as trade union, youth, student and cultural organizations under the party umbrella. In the less highly organized mass party states, such as Ivory Coast, the Eastern Region of Nigeria, Senegal and Togo, these modern associations tend to be foci of opposition outside of the mass party, though not necessarily calling themselves parties.

The opportunity to express opposition through rival political parties also varies. In no mass party state is all organized opposition to the dominant party directly excluded by law. It is excluded in effect, however, where it is a matter of doctrine to insist on the single party, the parti unique. It is less excluded where leaders justify the single party for empirical reasons as a parti unifié, making common cause in the present national emergency. Evidence both from Nigerian politics and from the political history of the former federation of French West Africa suggests that federalism, by making it desirable politically for leaders strong in one region to seek support in another, works towards maximizing the opportunity for organized opposition groups not only to exist, but also to flourish.

Where single party states are based on patron parties, mass party opposition groups exist, and at least in Niger, Northern Nigeria, and to less extent Upper Volta, have considerable momentum behind them. But in mass party states, from among what groups has organized opposition come? There are 'one man shows' such as the Union Démocratique et Sociale Africaine(x) of Guinea or the Front de Libération Nelle(x) of Ivory Coast, rump groups left over from mergers or reorganizations like the post-war Parti Socialiste Sénégalais(x) and the 'expatriate' groups such as the Parti de la Libération de la Côte d'Ivoire in Guinea; these have simply curiosity value.

The staying power is also limited of parties like the Parti de Solidarité Sénégalaise, built by disaffected 'clan leaders' and other rural personalities. Numerous ethnic minor parties exist, in the countryside, such as the Union Dogon(x) of Soudan, or the Socialists among the Bété of Ivory Coast. When ethnic parties are based on urban areas, their supporters usually belonged to the tribes which originally owned the land--the Rassemblement Démocratique Sénégalais among the Lébou of Dakar, for example. Standing alone, these ethnic groups have little potential in national politics. But there might be a future if well-organized teams of educated leaders synchronized the discontent among minority ethnic groups--as the Action Group of Nigeria has done in the East, and the National Council of Nigeria and the Cameroons has done in the West of the Federation of Nigeria.

More significant are opposition groups among 'young Turks', mostly townsmen differently educated or younger than the men leading the dominant parties: JUVENTO in Togo, An Nahda al Watania al Mauritania (Party of the National Renaissance of Mauretania), Parti du Regroupement Africain-Sénégal, and the Parti Africain de l'Indépendance of Senegal. With the possible exception of the Parti Africain de l'Indépendance, these avant-garde groups had no conscious elitist theory governing recruitment, but in practice their audience was still confined to the modern elite, to youth and student and trade union groups. Particularly when the party in power was of a mass type, most of these groups alternated between opposing it, and joining it in order to constitute a 'party within a party.' These 'Young Turks' were nationalists and modernizers. They had little appetite for ethnic, separatist opposition of the type loosely allied in the United Party of Ghana.

The 'young Turks', perhaps eventually joined by breakway groups from among the 'founding fathers', constitute the actual or potential national, not ethnic opposition. As long as the elite is small, the civil service is likely to absorb the most newly educated strata of the elite--and dominant parties will brook no partisan opposition from within the civil services. On economic development depends the growth of the modern strata of African society in large enough numbers, and spread evenly enough across ethnic groups, to permit opposition party leaders to calculate in ethnic and status 'arithmetic'. The chance of opposition groups eventually displacing in elections dominant mass parties in the single party states, is increased as the 'national emergency' ends. Independence is mostly acquired. Now in West Africa, unity for economic development is the order of the day.

There are, in the mass party states of West Africa, obstacles to the democratic process--as in most other parts of the world. But on the whole so far mass party states, as successors to the colonial territories, have enlarged the area of freedom of West Africans, and have done so by using to good effect the emphasis on:

> union, a word like friendship, goodness, an abstract thing having no face, raising no concrete image in the mind. It goes into all sauces; it accommodates itself with irreconcilables.1/

1/ La Liberté, November 23, 1954.

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IS THERE A PUBLIC INTEREST?*

by

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

I have been asked to make, for purposes of this occasion, a brief statement of the findings and conclusions derived from research that I have been carrying on over the past several years in the theory of the public interest as a political concept. My investigation has been concerned primarily with the usages of the public interest concept to be found in the writings of political scientists during the last three decades. Although I recognize that members of our profession have no copyright on the term, and that, indeed, the uses of the concept by non-political-scientists are doubtless of vastly greater significance -- at least if one is to measure importance in terms of what goes on in the world -- then its appropriation and exemplification in our professional literature, nevertheless, I believe that there is a justification (other than that of convenience) to support the sample that I have chosen to examine. Without any intention of denigrating our professional reputation as a group of, shall we say, independent thinkers, I think it is fair to assume that a broad sampling of political science writings of the past generation is likely to reflect with reasonable faithfulness the larger universe of meanings attributed to the public interest concept in the behavior of American society -- and I mean by this to include specifically, of course, American political society -- which is the relevant body of data with which one must be concerned if he is interested in the contemporary theory of the public interest in the United States.

Within the obvious -- one might almost say notorious -- confines of a panel paper intended for oral presentation, it is manifestly impossible for me to discuss the data upon which my findings and conclusions are based. In any event, I attempted to perform such a feat, with most unhappy results, several years ago at a regional association conference when, as upon the present occasion, I was honored to share the table with Professor Morgenthau in a panel discussion of this same subject. Moreover, the data and the apparatus which I employed for their analysis will soon, I have been assured, be available to whatever interested public there may be in the public interest, through the medium of the book mentioned (in the footnote) below. I shall, therefore, direct my

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* This paper is based directly upon selections from the concluding chapter, which bears the same title as this paper, of my forthcoming book, The Public Interest, to be published by The Free Press of Glencoe, Illinois.

remaining remarks to a brief summary of my own classification of public interest theorists, and to an even briefer summary of the research of other critics of public interest theory. The latter, at least, are well represented among the panelists present today, which puts them in the not unenviable position of being both free and obliged to speak for themselves.

1.

I find it both convenient and useful to classify American political science writers on public interest theory into three groups, whom I shall call Rationalists, Idealists, and Realists. For present purposes, I think that it may be both quicker and more enlightening if I eschew any attempt at scientific definition of these terms, leaving their meaning, instead, to unfold through illustration and contrast. Let us first consider each, in turn.

The Rationalists are propublic proparty, and anti-interest group. They postulate a common good, which reflects the presumed existence of various common -- frequently majoritarian -- interests. The common good (or commonweal, to use the older term) finds expression in a popular will (public will; will of the people); the common obligation of all public officials is faithfully to execute the popular will. To this extent, there is consensus among Rationalists. Differences of opinion are many, however, as to the appropriate channels for authentic interpretation of the public will. Basically, there are two factions: Party Rationalists and Popular Rationalists. Party Rationalists defend a stronger two-party system as the chosen instrument for expressing the public will; Popular Rationalists would do away with political brokers and consult public opinion directly in order to discover the will of the people. Party Rationalists tend to be Anglophiles with regard to the political-party system, the relationship between legislators and political parties, and the relationship between the executive and the legislative departments. (Incidentally, the model of British political processes envisaged by the Anglophiles bears no necessarily close correspondence to contemporary reality.) The Party Rationalists urge, therefore, that congressmen ought to be the disciplined members of a majority or a minority party, with the two parties dividing over issues of public policy. Popular Rationalists think that congressmen ought to carry out the wishes of their constituents.

The Anglophiles believe that the Presidency should be weakened and subjected to the control and policy direction of Congress, which they have already defined as the legitimate expositor of the public will. Other Party Rationalists, however, would link presidential leadership to a stronger two-party system, thus strengthening the Presidency. Popular Rationalists would accomplish the same result by casting the president in the role of charismatic leader of direct popular majorities. At this point, the distinction between Party and Popular Rationalists disappears, because all Rationalists agree that the poper function of the bureaucracy is to carry out the policy norms supplied by hierarchial superiors (Congress and the president). Administrative Rationalists would use scientific management to

rationalize the behavior of administrators; Judicial Rationalists would accomplish the same result among judges according to the prescriptions of Analytical Jurisprudence. In both instances, administrators and judges are supposed to exercise technical discretion to carry out norms which they do not make, but which are supplied to them in the form of constitutional provisions, statutes, and executive orders -- made, of course, by the representatives of the people, who implement the public will. There is a schism among Rationalists regarding how best to rationalize the independent regulatory commissions; Administrative Rationalists want to place the commissions within the ambit of presidential control, and Judicial Rationalists want the commissions to be subject to the administrative direction of the judiciary. Either way, it is variously argued, the commissions would become subservient to the will of the people, and the common good would be assured.

The Idealists are propublic, antiparty, and anti-interest group. By "propublic," I mean, of course, that Idealists support the true interests of the public, which do not necessarily coincide with the interests of the public as perceived by the public itself. Idealists believe that the public interest reposes not in the positive law made by men, but in the higher law, in natural law. They describe the public interest as a thing of substance, independent of the decisional process and absolute in its terms. They advise the public official to excogitate the true essence of the public interest by means of a mental act of extrasensory perception. This does not necessarily imply communion with the public will, because no will may yet have been formulated regarding the relevant issues; in any event, there is no assurance that the public will will be right. The public interest becomes whatever the still, small voice of conscience reveals to each official.

Such an approach renders superfluous, if not downright dangerous, such orthodox appurtenances of democratic politics as political parties and interest groups. These latter are perceived as disturbing interferences with official excogitation of Truth, Virtue, and Justice. According to Idealist thought, congressmen are responsible neither to political parties nor to their constituencies; they have a higher obligation, to God and to their own consciences. Those who advocate converting the Presidency into a plebiscitory dictatorship emphasize the evils of party influence; proponents of the Stewardship Theory of the Presidency wish to surmount the pernicious demands of selfish special interest groups. In either case, the president is urged to rise above the mundane level of democratic political processes and to become the Father of his Country, the patron of all of the people, a leader of crusades both at home and abroad who should receive love and adulation -- not criticism -- from his subjects.

The same images recur in Idealist discussion of administrative decision-making. Administrative Engineers advise administrators to be creative manipulators and to resist the seductions of interest groups. Guild Idealists warn -- almost in the words of Madison -- of the dangers of party politics, and demand that administrators be given elbowroom for the exercise of craft and conscience. Substituting judges for administrators, equivalent prescriptions are

offered by the spokesmen for Sociological Jurisprudence and Scientific Idealism, respectively. Thus, the themes which permeate Idealist public-interest theory are the invocation of natural-law ideals; hostility to the instrumentalities of democratic politics, i.e., political parties and interest groups; elitist notions of superior intelligence and wisdom; and the abetment of public officials, from the president on down, to become aggressive evangelists who will strive mightily -- and ruthlessly, if necessary -- in behalf of the public interest. The public interest, of course, is what the elite thinks is good for the masses. Idealist dogma, as dogma, is basically antithetical to democratic theories of governance.

The Realists are pro-interest group. It is not accurate to say that they are antiparty or antipublic. However, they define "party" and "public" in such a way that these terms lose the identity that we have ascribed to them in discussing Rationalist and Idealist thought, to say nothing of their usual, everyday meaning in American speech. Political parties become merely a special kind of interest group, and "public" becomes segmented as "publics," in which form it, too, merges in the concept of "interest group." The Realists, in other words, do not oppose the public and political parties; they devour them.

There are three major strands of Realist theory, and as befits a pattern of thought so colored with pluralism, the three major strands are each primarily oriented to one or more of the other social sciences. Bentlian Realism draws predominantly upon the outmoded sociology of the turn of the century; the source of inspiration for Psychological Realism is self-evident; and law and economics are the wellsprings for Due Process-Equilibrium Realism.

The Bentlians direct attention to the competition among multifarious interest groups and assert that this is the reality of political behavior at all levels of governmental (as well as non-governmental) decision-making. The official responds to these pressures; his decisions register the thrust of the balance of power for the time being. It makes no difference whether the decision-maker is a congressman, the president, an administrator, or a judge; his role is essentially the same, although the patterns of access and the particular constellations of groups that enter the lists will vary according to the institutional context in which the official decision-maker functions. To the Bentlians, the public interest has significance only as the slogan which symbolizes the compromise resulting from a particular accommodation or adjustment of group interaction.

Psychological Realists go beyond the essentially mechanical formulations of the Bentlians, and focus attention upon the conflict of interests within the mind of the decision-maker. The rather fuzzy Bentlian notion of unorganized groups is redefined by the Psychological Realists in terms of Dewey's concept of a self-conscious search for the consequences of choice. Thus, the role of official mediation described by the Psychological Realists adds a significant factor to the formulations of the Bentlians: the personal value system of the decision-maker. He is limited, of course, to the values that he understands and recognizes, but he is not necessarily limited to the values with which he personally agrees. His acceptance of such broad components of the democratic ethic as the concepts of

"freedom, equality, and opportunity" may lead him to take into consideration interests other than those actively pressing in behalf of specific alternatives of choice in a particular decision.

At this point, the line between Psychological Realism and Social Engineering may seem to be pretty shadowy, but the distinction is nonetheless viable. The Social Engineers write on a blank slate: creative manipulation leads to the fabrication of any interest-group pattern needed to support the predetermined goals established by the decision-maker. Official mediation looks to the interstices of a framework provided by the interaction of activated groups and asks what the effect would be, upon this pattern, if certain other interests were weighed in the final decision. In this sense, the official mediator functions as a catalyst; but since the critical conflict is internal to the decision-maker rather than in the external environment, Psychological Realism's search for consequences is a more operational concept than Bentley's mystical notion of the leadership of unorganized groups. Nevertheless, both are different ways of thinking about the same processes.

As we have seen, Psychological Realists apply the concept of official mediation to congressmen, the president, administrators, and judges alike. There is a close functional relationship, however, among politicization, constituency size, and the limits of official horizon. In Harlan Cleveland's image, the president stands a little higher on the mountain than anyone else, and consequently can see further; district court justices and subordinate administrators, presumably, have much more limited horizons. But what of the Supreme Court? Are the justices on a separate alp? I do not think a meaningful answer to this question is possible at the present stage of underdevelopment in the measurement of power by the political science profession; but the question raises doubts, in any event, about the application of Cleveland's hierarchical image, rather than about Psychological Realism's concept of official mediation.

The next logical step beyond Psychological Realism is to prestructure the environment of decision-making and to condition the mental processes of the decision-maker. It is to these matters that the Due-Process Realists call attention. Although all Realists premise their theories of the public interest upon a philosophy of ethical relativism, rather than the absolutism characteristic of Rationalists and Idealists, the Due Process-Equilibrium Realists lean most heavily upon what is, at least crudely, mathematical-probability theory. According to the theory, people accept democratic decision-making processes because these provide the maximum opportunity for diverse interests to seek to influence governmental decisions at all levels. A plurality of decision-making points afford access to a plurality of interests, which can seek to change or to provoke particular decisions. The job of official decision-makers -- irrespective of whether we speak of congressmen, the president, administrators, or judges -- is to maximize continuity and stability in public policy; or, in other words, to minimize disruption in existing patterns of accommodation among affected interests. The extent to which agitation continues, before the same or other

decision-makers, provides a rough measure of the extent to which adjustment has, in terms of the equilibrium standard, been successful or "satisfactory."

Now this kind of thinking is quite conservative in its general overtones. It underscores the adjectives in advocating gradual, peaceful, evolutionary, orderly change. It does not tilt, it slants the scales of judgment in favor of the status quo. The votaries of liberalism preach a brand of ethics in which most Americans feel they ought to believe; but it is not a way of life, nor is it the basis for our system of government. It is the Constitution, not the Declaration of Independence, that provides the model for the American political system. The general model leaves largely unspecified, however, the structure and functioning of decision-making processes in Congress, the Presidency, administrative agencies, and the courts. It is particularly upon administrative decision-making processes that the Due Process-Equilibrium Realists have focused their attention.

Instead of leaving the "representativeness" of the administrator's personal value system, or the particular configuration of interests in a specific type of decision, up to chance, Due-Process theory would so structure both of these factors in the decision-making process as to maximize the probability that the resulting decision has been made, in fact, after consideration of all relevant interests and perspectives. Due-Process theorists do not claim that any particular substantive result will automatically be the "right" decision; they do not guarantee that every decision arrived at after such full consideration will be "in the public interest." This is the point that seems so difficult for absolutists, who live in a world of dichotomies, to comprehend. What the Due-Process theorists do claim is that decisions reached as a result of such full consideration are more likely to meet the test of equilibrium theory, i.e., "satisfaction," acceptance, etc., and to do so most of the time, than are decisions arrived at as the necessary consequence, at least in a statistical sense, of processes that assure less than full consideration. Decisions that are the product of a process of full consideration are most likely to be decisions in the public interest.

There has been some, but very limited, application of the concept of "administrative due process" to congressional, presidential, and judicial decision-making. Although some critics have decried placing "the organization man in the Presidency," the fact remains that the applicability of the model of "administrative due process" to these other decision-makers is a function of bureaucratization of congressional, presidential, and judicial decision-making processes. Certainly, there is considerable evidence to support the proposition that the trend in each of these areas is towards greater bureaucratization. To this extent, the potential extension of the public-interest theory of the Due Process-Equilibrium Realists is correspondingly enhanced.

2.

Two decades elapsed after Beard's historical studies of the national interest as a concept, before any systematic analyses of the public-interest concept appeared in the literature of political science. Beginning in 1955, however, several political scientists and philosophers have ventured independent (from each other, and from my own work) exploratory critical essays on the subject of public interest theory. A survey of the findings of these critics suggests, however, that they have little to add to the results of my own investigation of public-interest theory. Some of them (e.g., Banfield, Sorauf, Leys and Perry) suggest differing perspectives from which the literature may be viewed and appraised. Such alternative formulations do not appear to lead to insights or to comprehension of public-interest theory significantly different from that produced by the conceptual schema that I have employed, however. Any systematic typology may have utility for analytical purposes, but no matter how the literature is classified and the data are compared, no systematic body of "public-interest theory" appears extant. American writers in the field of political science have evolved neither a unified nor a consistent theory to describe how the public interest is defined in governmental decision-making; they have not constructed theoretical models with the degree of precision and specificity necessary if such models are to be used as description of, or as a guide to, the actual behavior of real people. A theory of the public interest in governmental decision-making ought to describe a relationship between concepts of the public interest and official behavior in such terms that it might be possible to attempt to empirically validate hypotheses concerning the relationship. If extant theory does not lend itself to such uses, it is difficult to comprehend the justification for teaching students of political science that subservience to the public interest in a relevant norm of official responsibility.

Moreover, critical investigation has failed to reveal a statement of public-interest theory that offers much promise either as a guide to public officials who are supposed to make decisions in the public interest, or to research scholars who might wish to investigate the extent to which governmental decisions are empirically made in the public interest. For either of the latter purposes, it would be necessary to have operational definitions of the public-interest concept; and neither my analysis nor that of other contemporary critics suggests that the public-interest theory prevalent in America today either is or is readily capable of being made operational.

3.

Rationalist theory has limited relevance to the empirical world, since it speaks primarily of faithful execution of decisions that somebody other than the actor has made; it offers little guidance to the decision-maker who is expected to make policy in the face of the conflicting demands of an articulate and organized clientele. In fact, the more important the decision -- and as a usual consequence, the more complex the decision-making milieu -- the less guidance has Rationalist

theory to offer. It might, for instance, indicate what would be responsible presidential behavior in signing commissions for the promotional lists of the armed forces; it most certainly will not be very helpful to the president in deciding whether and how to get a man to the moon. To get back down to earth, it will not even tell him when, and in terms of what criteria, he should exercise his veto power, since the Constitution clearly did not presume that the president would take his orders from Congress (or vice versa) in exercising his power to grant or to withhold his approval of enrolled bills -- even if we assume, with the Rationalists, that constitutional intent is the fundamental consideration in such circumstances. The theoretical apparatus of the Rationalists, however elegant it otherwise may be, is limited precisely by their insistence that a science of political behavior cannot be concerned with political choice. The model constructed by the Rationalists is a sausage machine: the public will is poured into one end and out of the other end drops neat little segments of the public interest, each wrapped in its own natural casing.

Idealist theory, to the contrary, speaks precisely to the macroscopic type of decision with which the Rationalists cannot be concerned. But what does Idealism have to offer, other than moralistic exhortations to do good? It leaves the decision-maker to rely upon his own best lights whether these are conceived of as a Platonic soul, a Calvinistic conscience, or as Catholic natural law. It may be that any of these provides the best standards available for guiding some decision-makers in some situations; but labeling as "the public interest" either such a process or the result that it produces adds nothing to what we would have -- except from the point of view of the engineering of consent -- if there were no such phrase as the public interest. With or without the label, we must rely upon the prior political socialization and the ethical preconditioning of the individual decision-maker for whatever kind or degree of responsibility that ensues in such circumstances.

Moreover, the concept of the public interest logically is irrelevant to decision-making in accordance with Idealist theory, in which ultimate obligations and responsibility are nonpolitical. It is neither to the public nor to hierarchical superiors nor to the affected clientele that the decision-maker looks for guidance; his responsibility lies in faithfulness to his personal perception of other abstractions, such as "justice," that are at least equally as devoid of a predictable content as "the public interest." Unless the Idealists are prepared to advocate the "brain-washing" of candidates for public employment to assure the establishment of a single party line among government officials, the practical utility of their theory would seem to be quite limited unless, in the alternative, they can explain how men with differing value orientations are to commune with the infinite and come up with common answers. Idealist theory really implies an officialdom of Supermen, which in turn evokes all of the difficulties to be encountered in breeding a race of official heroes -- or, if it makes a difference, of heroic officials. None of the Idealist writers in recent years seem to have improved very much upon Plato's discussion of this subject, nor do they appear to have resolved the age-old dilemma: how to keep the tyrants benevolent.

Realists advise the decision-maker that his job is to resolve the conflicting claims of competing interest groups, and to keep the boat from rocking so far as possible. Except on the merely mechanical and purportedly descriptive level of naive Bentlianism, he should do this with as much consideration as he is capable of giving, or as he can be made capable of giving -- by the structuring of the decision-making situation -- to the probable consequences of his choice. The principal difficulty with the theory, even in its most sophisticated form, lies in its generality, for the Due Process-Equilibrium Realists describe wondrous engines (including the human mind) into which are poured all sorts of miscellaneous ingredients which, after a decent period of agitation, are spewed forth from time to time, each bearing a union label reading: "Made in the Public Interest in the U. S. A." But their hero is neither the Charlie Chaplin of Modern Times nor Prometheus unbound; he is the counterpart of the politician described by Herring in The Politics of Democracy.

The problem facing Realist theorists is to demonstrate how it is possible to bridge the hiatus between the ideal they posit and the empirical world. It is true that the statements of at least the administrative-Due Process Realists do suggest the possibility of constructing more detailed models of specific decisional processes in particular agencies with identifiable functions to perform. Such models, whether as descriptions of existing agencies, or as blueprints for reorganized or new agencies, might lend themselves, at least in principle, to empirical verification. Assuming, for the sake of argument, that the paperwork can be done, it would still be necessary to construct and implement, upon an experimental basis, at least one model prefabricated political decision-making process; budget estimating might be a good place to begin. Assuming that this also could be done, ahead lie questions of continuous reorganization to cope with predictable problems of obsolescence, the development of more genuinely interchangeable human cogs, and -- not least -- the impatience of the American public after it becomes known to the world that the Russians have perfected a successfully functioning (and much bigger) organization of the same type several months before the American protomodel is announced. And that announcement, we might as well anticipate, will come at the same time that the American team of responsible budget analysts is about to produce its first under-balanced budget -- which will be made, needless to say, in the public interest.

4.

It may be somewhat difficult for some persons to accept the conclusion that there is no public-interest theory worthy of the name and that the concept itself is significant primarily as a datum of politics. As such, it may at times fulfill a "hair shirt" function, to borrow Sorauf's felicitous phrase; it may also be nothing more than a label attached indiscriminately to a miscellany of particular compromise of the moment. In either case, "the public interest" neither adds to nor detracts from the theory and methods otherwise presently available for analyzing political behavior.

I recognize also that there may be some who will consider this paper incomplete, since I have criticized the public-interest theories of other persons without making any attempt to "do something positive" by suggesting a public-interest concept of my own. The expectation that the iconoclast ought to pick up the pieces and build a new and better temple on the ruins of the old runs like a steel thread through the moral fiber of most Americans, including academicians. I would dispute the premise. I would also argue, in any event, that if the public-interest concept makes no operational sense, notwithstanding the efforts of a generation of capable scholars, then political scientists might better spend their time nurturing concepts that offer greater promise of becoming useful tools in the scientific study of political responsibility.

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LIMITATIONS OF THE FEDERAL CRIMINAL STATUTE, 18 U.S.C. 242, IN PROSECUTING CIVIL RIGHTS VIOLATIONS*

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

This article attempts to fill a gap in an understanding of the difficulties encountered by the Federal Government in conducting a program of vigorous enforcement of the criminal civil rights statute 18 U.S.C. 242.[1] In 1945 the Supreme Court, in Screws v. United States,[2] had established the constitutionality of the statute as a prosecutive weapon in cases involving police brutality and deprivation of due process of law. The Court had interpreted "willfully" in the statute to mean that a defendant must have the benefit of an instruction by a court that, in order to find him guilty, the jury must find that he had a specific intent to deprive his victim of certain individual rights which had been expressly defined by the terms of the Constitution, a federal statute, or by previous decisions of the Supreme Court. This particular intent was in addition to the general intent to commit an unlawful act. In addition to saving the statute from unconstitutionality, the decision resulted in preserving the existence of the then Civil Rights Section of the Department of Justice. Without Section 242 as a prosecutive weapon the ability of the Department of Justice to intervene in flagrant violations of due process of law in the criminal civil rights area would have been fatally weakened. The firmly established doctrine that the Fourteenth

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*It represents a summary of part of a larger study entitled FEDERAL ENFORCEMENT OF THE CRIMINAL CIVIL RIGHTS STATUTES. The author wishes to express his appreciation to the Rutgers University Research Council for its support of this study.

[1] 62 Stat. 696, 18 U.S.C. (Supp. III) 242 (1948).

[2] 325 U.S. 91 (1945).

Amendment applies to state officials, even when their improper action is unauthorized or forbidden by state law, provided the Federal Government with authority to intrude in an area normally considered belonging to the states and their citizens exclusively.

Earlier writers had considered a number of obstacles posed by the requirements in the Screws decision.[3] Despite the equivocal nature of the decision, it did save the statute from the fatal defect of vagueness; this appeared to overcome the confining features of the Douglas opinion. The holding requires a rigid formula which in its specificity has posed one of the most difficult obstacles to successful prosecution the Civil Rights Division has to face under the present meaning of the statute.

A number of considerations attendant upon the Screws requirement, and not heretofore presented in studies on civil rights enforcement, support a conclusion that the statute has become a fragile weapon in the armory of the Department of Justice. The prospect that contemporary racial and other tensions (in the Southern States particularly, but not exclusively) will create additional incidents of police violation of Fourteenth Amendment rights places a heavy burden upon the Civil Rights Division. These it will find increasingly difficult to resolve under the judicially imposed limitations of the present statute.

Studies of cases under Section 242 that have so far appeared have been devoted to variegated analyses of criminal civil rights infractions and to the constitutional

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[3]See especially: CARR, FEDERAL PROTECTION OF CIVIL RIGHTS, pp. 113-115 (1947); KONVITZ, THE CONSTITUTION AND CIVIL RIGHTS, ch. 3 and 4 (1947); Cohen, "The Screws Case: Federal Protection of Negro Rights, 46 COL. L. REV. 94 (1946); Carr, "Screws v. United States: The Georgia Police Brutality Case," 31 CORNELL LAW QUARTERLY (Sept. 1945); Clark, "A Federal Prosecutor Looks at the Civil Rights Statutes," 47 COL. L. REV. 175 (1947); Fraenkel, "The Function of the Lower Federal Courts as Protectors of Civil Liberties," 13 LAW AND CONTEMP. PROB. (1948); Note, "May the Intent to Violate the Federal Civil Rights Statute Be Established by a Presumption?", 40 GEO. L.J. 566 (1952); Barnett, "What is 'State' Action Under the Fourteenth, Fifteenth and Nineteenth Amendments of the Constitution?", 24 ORE. L. REV. 227 (1945); TO SECURE THESE RIGHTS. The Report of the President's Committee on Civil Rights. (1947).

issues related thereto.[4] The present study complements these by examining the impact of the Screws decision upon the statute in terms of its effects upon the Civil Rights Division's prosecutional efforts in a particular case study of a civil rights trial - United States v. Paul V. Minnick.[5] Following an exposition, analysis, and critique of 18 U.S.C. 242 as a substantive criminal statute, this paper will evaluate the efforts within the Division, and in Congress, to correct weaknesses in the law. In addition, an attempt will be made to indicate lines of approach which could effectuate a strengthened prosecutive apparatus within the Civil Rights Division.

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[4] E.g., Caldwell, "The Civil Rights Section, Its Functions, and Its Statutes," DEPT. OF JUSTICE, Nov. 1957; Putzell, "Federal Civil Rights Enforcement: A Current Appraisal," 99 U. PA. L. REV. 439 (1951); Fraenkel, "The Federal Civil Rights Laws," 31 MINN. L. REV. 301 (1947); Note "Federal Power to Prosecute Violence Against Minority Groups," 57 YALE L.J. 855 (1948); Hale, "Unconstitutional Acts as Federal Crimes," 60 HARVARD L. REV. 65 (1946).

[5] No. 8466-M Cr., (D.C.S.D. Fla.) June 23-26, 1953.

Harry H. Shapiro

LIMITATIONS...IN PROSECUTING CIVIL RIGHTS VIOLATIONS

I.

DEVELOPMENT OF THE STATUTORY WEAPON

"A bent and blunted sword . . . unintelligible . . . neither terrible nor swift . . . of antiquated uncertainties . . . a left-over from the days of General Grant." Zechariah Chafee, Safeguarding Fundamental Human Rights, George Washington Law Review, Vol. 27, 1958-59, pp. 526-529.

Section 242, title 18, United States Code had its origin in the legislation of the Reconstruction period.[6] The Civil Rights Act of April 9, 1866, entitled An Act to protect all Persons in the United States in their Civil Rights, and furnish the means for their Vindication provided penalties for any person who under color of law subjected any inhabitant of any State "to the deprivation of any right secured or protected."[7] Protection was to be extended only to those rights enumerated, including "the right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of persons and property."[8]

An addition to the Enforcement Act of May 31, 1870 provided criminal penalties for violating, under color of law, those rights enumerated in the 1866 Act.[9] In 1873, the statute was further amended by broadening the protec-

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[6] On the federal civil rights statute 18 U.S.C. 242 see: Carr, op. cit., 70-77; Konvitz, op. cit., 1-106. Congressional debate on the statute is covered in abridged form in volumes 7 and 8 of Miller (ed.), GREAT DEBATES IN AMERICAN HISTORY (1913). See also Flack, THE ADOPTION OF THE FOURTEENTH AMENDMENT (1908). The history of enforcement during the Reconstruction period is recounted in Cummings and McFarland, FEDERAL JUSTICE (1937), and Davis, THE FEDERAL ENFORCEMENT ACTS, Studies in Southern History and Politics (1914).

[7] 14 Stat. 27.

[8] Id., c. 31, sec. 2.

[9] 16 Stat. 140, c. 114, secs. 16, 17.

tion to include rights "protected by the Constitution and the laws of the United States", and became Section 5510 of the Revised Statutes.[10]

In 1909, Section 5510 was codified as Section 20 of the Act of March 4.[11] A significant amendment was inserted, requiring that the forbidden action must be "willfully" perpetrated. Since federal authority cannot be asserted without proof of willfulness, this addition to the statute was to have a profound effect upon the Court in the Screws[12] case. Its interpretation by Justice Douglas has been of pervasive influence in subsequent prosecutions.

The statute was designated as Section 52, Title 18, United States Code[13] in 1925. A final amendment, with a minor change in phraseology, took place under the Act of June 25, 1948,[14] giving it the present Title 18, Section 242.

The statute is directed against any infringement of federally secured rights by the wrongful act of State or Federal Government officials. It breaks into two parts: the first relates to deprivation of federal constitutional and statutory rights generally; the second concerns itself with discriminatory punishments, and turns on race, alienage, or color. Despite the presence of race as a motivating factor in incidents of police brutality resulting in prosecutions by the Federal Government, the statute is applicable to all persons; it has not been restricted in its application to the Negro.

Section 242 comes into play where there is a deprivation of federally secured rights, committed "under color of law", and done with "willful" intent. It is a misdemeanor offense, carrying a maximum penalty of one year in jail and/or a fine up to $1,000. This, then, is the sole criminal statute upon which the Federal Government must rely in carrying out its program of civil rights enforcement against official acts involving Fourteenth Amendment rights.

Additional characteristics include the protection of

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[10] R.S. 5510, sec. 20.

[11] Cr. Code, Mar. 4, 1909, 35 Stat. 1092, c. 321, sec. 20.

[12] Screws v. United States, 325 U.S. 91 (1945).

[13] 44 Stat. 464, sec. 52.

[14] 62 Stat. 696, 18 U.S.C. (Supp. III) 242 (1948).

inhabitants rather than citizens exclusively, and its application to single individuals. Thus Section 242 does not encompass conspiracy, although private individuals may be punished under the Federal conspiracy statute[15] involving a violation of Section 242 by persons occupying public office - Federal, State, or municipal, or those who exercise governmental powers. In United States v. Classic[16] the Supreme Court for the first time made clear that actions of public officers may be punished even though the act is violative of State law.[17] The Classic decision also clarified the two distinct categories of crimes encompassed within the scope of the statute. The Court concluded that two separate crimes are punishable - one being action under color of law willfully to subject an inhabitant ". . . to the deprivation of rights secured by the Constitution"; the other, "willfully subjecting any inhabitant to different punishments on account of his alienage, color or race, than are prescribed for the punishment of citizens . . ."[18] However, the Classic case was confined to the applicability of Section 242[19] (and Section 241) to certain electoral rights. It remained for Screws v. United States[20] to become the first case to test the constitutionality of the statute as a protection against deprivation of fundamental personal security rights as enumerated above. In this study, primary emphasis is given to the impact of the Screws requirement upon federal prosecutions of "willful", "under color of law", deprivations as these manifest themselves in the form of police brutality.

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[15] 18 U.S.C. sec. 371.

[16] 313 U.S. 299 (1941).

[17] Id. at 326.

[18] Id. at 327.

[19] The statute has undergone a number of numerical revisions; this article will refer to it as Section 242, regardless of the particular preceding numerical designation.

[20] 325 U.S. 91 (1945).

II.

THE CONTROLLING CASE - SCREWS v. UNITED STATES[21]

"We hesitate to conclude that for 80 years this effort of Congress, . . . to protect the important rights of the individual . . . has been an idle gesture. . . . It brought within (Section 242) only specified acts done 'under color of law' . . . which deprived a person of some right secured by the Constitution or laws of the United States . . . if we construe 'willfully' . . . as connoting a purpose to deprive a person of a specific constitutional right. . . . The requirement that the act must be willful . . . does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware."
Justice Douglas for the majority.

"In effect, the position (of the defendants) urges it is murder they have done, not deprivation of constitutional right. Strange as the argument is the reason . . . that abuse of state power creates immunity to federal power. . . . The defense is not pretty. Nor is it valid. Section (242) strikes only at abuse of official functions by state officers . . . prosecution has not been frequent, . . . only in cases of gross abuse, . . . and . . . has produced no grave . . . problem of interference by federal authority in state affairs . . . the result legally could not be to give state officials immunity from the obligations and liabilities the (Fourteenth) Amendment and its supporting legislation have imposed."
Justice Rutledge, concurring in the result.

"The significant question, . . . is whether law enforcement officers and those entrusted with authority

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[21] 325 U.S. 91 (1945). Four separate opinions were delivered. No more than four justices concurred in any one of them; and Justice Rutledge, although believing that the conviction of Screws should be affirmed, joined with the four who voted to reverse the judgment of the lower court so that the Court could dispose of the case. Justice Murphy dissented from the reversal, but supported the constitutionality of the statute. The three other dissenting justices thought Section 242 should be held unconstitutional.

shall be allowed to violate with impunity the clear constitutional rights of the inarticulate and the friendless." Justice Murphy, dissenting.

"Of course the petitioners are punishable. . . . The practical question is whether the States should be relieved from responsibility to bring their law officers to book for homicide, by allowing prosecutions in the federal courts for a relatively minor offense carrying a short sentence. The legal question is whether, . . . hitherto settled principles for the protection of civil liberties shall be bent and tortured . . . if the terms of (242) . . . are lacking in sufficient definiteness for a criminal statute, restriction within the framework of 'decisions interpreting' the Constitution cannot show the necessary definiteness. . . . If . . . crimes against local law cannot be locally prosecuted, it is an ominous sign . . . the cure is a reinvigoration of State responsibility . . . not an undue incursion of remote federal authority." Justices Roberts, Frankfurter and Jackson, dissenting.

The Screws case, in its factual, and judicial implications, represents two major facets of a problem which has grown to disturbing proportions in the United States.[22]

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[22]See INTIMIDATION, REPRISAL AND VIOLENCE IN THE SOUTH'S RACIAL CRISIS. Published jointly by: Southeastern Office, American Friends Service Committee: Department of Racial and Cultural Relations, National Council of the Churches of Christ in the United States of America; and Southern Regional Council. (Jan. 1, 1955 to Jan. 1, 1959) New York, 1959. It should be emphasized in this context that incidents similar to those reported in this report have occurred in other parts of the United States. See: TO SECURE THESE RIGHTS: Report of the President's Committee on Civil Rights, Washington (1947), pp. 114 et seq., Tabulation of convictions under Section 242 supplied by Hon. Warren Olney, III, Administrative Officer, United States Courts, appended to this article; ANNUAL REPORT(s) OF THE ATTORNEY GENERAL OF THE UNITED STATES for the years 1955-1959 incl., Testimony of Tom C. Clark (then Attorney General of the United States) before the House Judiciary Committee, Hearings on H.R. 115, et al., Series No. 18, at 67-80 (1949), and Hearings before the Special Subcommittee to Investigate the Department of Justice of the Committee on the Judiciary by the Subcommittee to Investigate the Department of Justice, 83rd Cong., 1st Sess. (1954). See also footnotes 99, 105, 106, 114 below.

The killing of a Negro, Robert Hall, was an example of police brutality in an extreme form - a "shocking and revolting episode in law enforcement." It represented a form of deprivation that has significantly increased in the United States - incidents of "posse killings",[23] or "official lynchings." Although the statute as applied in Screws and in subsequent cases was not invoked primarily because of the racial or equal protection factor, its application here and in other incidents in which police brutality take place, has been influenced by racially induced deprivations. Thus, within the context of the first facet, the statute lies at the center of the race question in that, where violence results from racial tension, there the police may step over the line that separates their action from lawful arrest to that of an act which is violative of the right to be free from summary punishment. This brings the officer within the prosecutive ambit of Section 242. The judicial implications divide into two parts: one, the upholding of Section 242 as the major criminal civil rights statute; and, two, the impact of the Court's requirement upon subsequent jury court trials, in which the charge to the jury, taken from the context of the Screws requirement, becomes controlling.

Since the Screws case has been discussed in a number of texts and journals,[24] detailed presentation here is not warranted.[25] A brief resume of the facts in the case may be of assistance in placing the particular form of violation in the proper context of 242 violations. Screws, a sheriff of Baker County, Georgia, with the assistance of two local officers arrested and beat to death Robert Hall. After the refusal of local authorities to prosecute, and the failure of state authorities to take action, the Department of Justice succeeded in obtaining an indictment[26]

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[23]Thurgood Marshall, Esq., Chief Counsel, Legal Fund, National Association for the Advancement of Colored People. Interview, Nov. 24, 1959.

[24]See note 3 above.

[25]Briefs and records, Screws v. United States, 325 U.S. 91 (1945).

[26]The fact that a federal grand jury from the same locale indicted would signify that aggressive and persistent action by the Department of Justice often brings positive results where local authorities may be reluctant to prosecute. It also indicates protests by white citizens, even in the Deep South, where acts of brutality against Negroes raise questions of morality and conscience, as well as of illegality.

under the substantive criminal civil rights statute, Section 52 (242).[27] Following conviction, each defendant was fined $1,000 and given a three-year prison sentence. Appeal was made to the Fifth Circuit Court of Appeals which upheld the trial court's sentence; the case then came to the Supreme Court on a writ of certiorari.[28]

A reading of the opinions in the substantive case indicates wide divergence within the Court on several major issues of constitutional importance. The majority Justices declared that the constitutionality of the statute could be upheld and the sensitive relationships between Federal-State governments could be clarified within the context of the protective scope of the Fourteenth Amendment. Also the statute could be narrowed down to a close formula which would satisfy criminal statute requirements, and state's rights (and responsibilities) champions who were

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[27] Section 52 became Section 242 in 1948. See note 19 above. The defendants were also indicted under Sections 51 (241) and the general conspiracy statute Section 88 (371). Conviction under Section 88 (371) made possible increasing the maximum jail sentence.

[28] Screws v. United States, 140 F.2d 662 (C.C.A. 5th, 1944). On a writ of certiorari to the Circuit Court of Appeals plaintiffs claimed that the District Court did not have jurisdiction since Hall was not killed under authority of the state; that an arresting officer is not an executive, legislative, or judicial officer and thus cannot act for the state unless he is authorized by law and when he exceeds his authority his action cannot be considered as being state action. "The Federal government has no right to take over the administration of state criminal laws." The Government's position was that the petitioners willfully deprived Hall of rights secured by the Fourteenth Amendment which are protected against state action; that due process of law forbade deprivation of life unless tried and convicted of a crime punishable by death, in accordance with procedures complying with requirements of fundamental fairness and justice; that the acts of petitioners were ascribed to the state for purposes of determining responsibility under the statute, even though unauthorized by the State of Georgia; that petitioners acted under color of law. "The statute in the clearest and most unequivocal language was designed to confer broad Federal protection upon the enjoyment of basic constitutional rights, . . . as applied here (it) is not so vague and indefinite as to be unconstitutional, . . . The idea of complete specificity must yield to the practical requirements of legislation." Screws v. United States, 325 U.S. 91, 162 ALR 1334-1335 (1945).

concerned by the aspect of greater and more threatening federal intrusion.

"Intent" was one of the core problems. On this the trial court had taken a broad view, the inadequacy of which was recognized by Justice Douglas:

> "The difficulty here is that this question of intent was not submitted to the jury with the proper instruction . . . in view of our construction of the word 'willfully' the jury should have been instructed that . . . to convict it was necessary . . . to find that petitioner had the purpose to deprive the prisoner of a constitutional right. . . . And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances - the malice of petitioners, its character and duration, the provocation, if any, and the like."[29]

But was that sufficient? Did it or did it not provide in the definition of the crime the requisite ascertainable standards of conduct which were prohibited to Screws under the statute? According to the dissenting Justices, it did not. To them the statute was restricted to alleged deprivations of federal rights by state law; it did not include breaches made by state officers. Screws had therefore not committed any act 'under color of law'. In their opinion the statute failed of constitutionality since it did not meet the standard of definiteness required in criminal statutes. Screws was indeed punishable. It was the responsibility of the State of Georgia to punish him, not the federal government under a law,

> "born of that vengeful spirit which envenomed the Reconstruction era . . . , (a) shapeless and all-embracing statute (which) can serve as a dangerous in-

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[29] 325 U.S. 91, 162 ALR 1341, 1342 (1945). The trial court had omitted the word "willful" in its charge: ". . . if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, . . . then they would be acting illegally under color of law . . . and would be depriving the prisoner of certain constitutional rights . . ." Id. at 94.

strument of political intimidation and coercion in the hands of those so inclined."[30]

To the minority, the statute suffered from basic flaws which could not be remedied by applying the law only where the defendant has the requisite "bad purpose":

> "It is as novel as it is an inadmissible principle that a criminal statute of indefinite scope can be rendered definite by requiring that a person 'willfully' commit what Congress has not defined but which, if Congress had defined, could constitutionally be outlawed."[31]

"Vagueness" as a test of constitutionality had first been evidenced as a doctrine by the Supreme Court in International Harvester Co. v. Kentucky.[32] Both the majority and the dissent could find support for their positions on "vagueness" in earlier decisions of the Court. Generality of language and absence of the requirement of willfulness had been grounds for voiding some statutes[33] and upholding others.[34]

The majority opinion[35] held that the statute was saved from the charge of unconstitutionality by requiring as willful intent not a bad purpose alone but,

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[30] Id. at 1362, 1372.

[31] Id. at 1368.

[32] 234 U.S. 216 (1914).

[33] E.g., Pierce v. United States, 314 U.S. 306, 310 (1941); Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939); Herndon v. Lowry, 301 U.S. 242, 261 (1937).

[34] E.g., Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942); United States v. Ragen, 314 U.S. 513, 523 (1942); Gorin v. United States, 312 U.S. 19, 26 (1941). In United States v. Cohen Grocery Co., 255 U.S. 81 (1941) "willfully" was in the statute, but "intent" was not a part of the Court's opinion.

[35] Justice Rutledge believed that the judgment should be affirmed, but voted with the majority so that the Court could dispose of the case. Screws v. United States, op. cit. supra, p. 1358.

> "a specific intent to deprive a person of a federal right made definite by decision or other rule of the law . . ."

By meeting this standard it could be "preserved as one of the great rights which the Fourteenth Amendment was intended to protect."

Each of the four opinions also dwelled upon the possible misuse of federal power in such a statute. Justice Douglas explained it thus:

> "We agree . . . that this statute should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. Thus Congress . . . brought within Section 20 (242) only specified acts done 'under color of law' . . . which deprived a person of some right secured by the Constitution or laws of the United States."[36]

Justice Murphy was forthright in dissenting from the remand.[37] He was not overly concerned with questions of specificity in the statute. He believed that a new trial could not add anything to the already clear guilt of the petitioners under the statute, regardless of the trial court's dereliction in omitting "willful" from the charge; it was to him an inconsequential error:[38]

> "the presence or absence of willfulness fails to decide the constitutional issue. Section 20 (242) is very definite . . . in its reference to the right to life spelled out in the Fourteenth Amendment quite apart from the state of mind of the state officials. . . . Too often unpopular minorities . . . are unable to find effective refuge from the cruelties of . . . bigoted and ruthless authority. . . . States are undoubtedly capable of punishing their officers who commit such outrages. But where . . . the states

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[36] Id. at 1344.

[37] Id. at 1359-1360.

[38] Id. at 1360.

> are unwilling . . . the federal government must step in unless Constitutional guarantees are to become atrophied."

Despite the belief of the Court in its entirety that the conduct of Screws was brutal, the votes were taken on the sufficiency of the trial court's charge and their findings on the constitutional issues. The case was remanded for retrial. The court's charge to the jury in the new trial (this followed the requirements of the majority in Supreme Court Case) exposed the basic problem, prosecution under Section 242.

Harry H. Shapiro

LIMITATIONS...IN PROSECUTING CIVIL RIGHTS VIOLATIONS

III.

UNITED STATES v. M. CLAUD SCREWS, FRANK EDWARD JONES, AND JIM BOB KELLEY[39]

From the Charge of the Court:

The Court (to the jury):

"Gentlemen of the jury, counsel have reminded me of one or two . . . things that I possibly should say to you, to be certain that it is clear in your minds.

"When I said . . . that if the law enforcement officer violated the law, that is, used more force than was necessary against a prisoner, that violated the law, that is all right as far as it goes; but I want you to be sure to understand that even though they might violate the law so as to commit manslaughter or murder . . . under the laws of the state, it still would not be an offense against the laws of the United States, unless that excessive force was used for the purpose of depriving the prisoner of the rights guaranteed to him by the Constitution. I want that to be plain to you . . . we are not trying a murder case. . . . That is for the State of Georgia. . . . And if these law enforcement officers only used enough force to protect themselves, or to make the arrest effective, they haven't violated any law. If, however, you believe beyond a reasonable doubt that they used excessive and unnecessary force,. . . for the purpose of depriving . . . of . . . Federally secured or protected, Federal Constitutional rights, that is the offense charged in . . . the indictment . . ."

Defense Counsel:

"I wish you would make it plain what you mean by 'criminal conduct'.

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[39]No. 1300 Cr. D.C.M.D. Ga. (Nov. 1, 1945). Copy of charge obtained from Civil Rights Division, Department of Justice. Screws and the others were also charged under Sections 51 (241) and 88 (371). However, this article is restricted to that portion of the charge which relates to the substantive offense under Section 52 (242).

The Court (to the jury):

"Well, I mean criminal conduct under the laws of the United States . . . to deprive Robert Hall of the rights protected and secured . . . by the Constitution . . . that if he is taken in custody by virtue of the laws of . . . Georgia under color of the laws of . . . Georgia and charged with a crime under the laws of . . . Georgia, then the Constitution of the United States assures to him a trial according to due process of law; that is, to be proceeded against in a duly constituted court before a Judge and a jury, after being indicted or charged against, and sentenced and punished in the usual way, and that he be not discriminated against by reason of his race or color. When I say criminal conduct, I mean . . . that these defendants set out to deprive him of those rights under the laws of the United States . . . "

Defense Counsel:

". . . I would like to renew my original exception to the race and color issue being submitted . . ."

The Court:

"Yes, all right. Well, gentlemen, you may retire now and resume your deliberations."

Following the remand, on November 1, 1945, Sheriff Claud Screws and the other officers were tried in the United States District Court for the Middle District of Georgia. These men had been once convicted, their conviction upheld by a Circuit Court of Appeals, only to be reversed by the Supreme Court. This was the fourth court to hear the case.

A Federal judge from a different judicial district was assigned to the case.[40] Under new instructions which carefully followed the requirements laid down by the Supreme Court, the case moved toward a denouement.

The judge first admonished the jury that there was "no place in this case for any racial question."

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[40]Judge Louis W. Strum was appointed District Judge Designate for the retrial. His usual assignments were in the Northern District, Florida.

The continued references to "race", the warnings to the jury to abjure any questions of race, only served to emphasize that this was emphatically a trial with strong racial overtones. But, said the court,

> "lay aside, completely and entirely, all matters of prejudice, bias, emotional appeals . . ."

In the charge it was pointed out that the Constitution assures every person, regardless of color, certain rights, including,[41]

> "The right to be secure in his person . . . and immune from illegal assault . . . the right not to be subjected to different punishment, pains and penalties by reason of . . . race or color . . . and the right to be brought by due process of law in the courts of the State of Georgia . . . the right not to be tried by ordeal out there on the Court-house square . . ."

As to the necessity for finding that the defendants had a "bad purpose" in the "transactions",[42] i.e. the fatal beating, Judge Strum made liberal use of the words of Justice Douglas. The act had to be "willfully committed". Here the judge went into a full explanation of the meaning of "willful", carefully following the Supreme Court's definition. It meant,[43]

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[41] Charge of the court, op. cit. supra, at 11.

[42] An odd word to refer to an assault by three men, using a two-pound solid bar blackjack, and fists resulting in death to the victim.

[43] Charge of the court, op. cit. supra, at 18. See Fraenkel, "The Function of the Lower Federal Courts as Protectors of Civil Liberties," 13 LAW AND CONTEMPORARY PROBLEMS, School of Law, Duke University (1948). ". . . the stress on the necessity for willful violation of constitutional rights makes it easy for a judge unsympathetic to the prosecution to induce a jury to acquit. This is what actually happened on the retrial . . ." A study of the court's charge does not sustain that opinion. While undoubtedly harmful in its effects upon the Government's case because of the question of "willful" intent, the charge followed the Screws requirement and the judge emphasized his own concern for protection under the statute. It should be considered as damaging, not from design, but from the necessities of the Supreme Court's requirement.

". . . an evil intent without a justifiable excuse . . . the gravamen of the offense consists in the evil design . . . and it is a question here whether this was willfully done.[44] So if this incident was no more than an unlawful homicide, which grew out of a personal . . . animosity . . . then it is merely an unlawful killing . . . which should be remedied in the State Courts of Georgia. . . . Such acts would not constitute a federal offense, unless you find . . . that the defendants had the specific intent of willfully depriving the prisoner of the right of being tried by a jury. . . . If you find that . . . the defendants . . . acted . . . without any thought . . . to deprive Hall of certain rights . . . granted and secured by the Constitution . . . the defendants would not be guilty of the offense charged. . . . But in considering the question . . . it is not necessary . . . that the defendants were thinking in terms of the Constitution . . . because all persons are charged with the natural . . . consequences of their voluntary acts . . . defendants cannot claim that they had no fair warning that their acts were prohibited by the Federal statute . . . those who decide to take the law into their own hands . . . plainly act to deprive a prisoner of the trial which due process of law guarantees to him; such a purpose need not be expressed by the defendants at the time they are doing these things, but it may be reasonably inferred from all the circumstances attendant upon the acts."

Counsel for the defendants took exception in their requested "points for charge" to that part of the indictment which referred to different punishments by reason of race; "there was no evidence that the victim was beaten because he was a Negro". The court did not allow this exception, but did refer to it. The jury acquitted Screws and the others. Subsequently they returned to their law enforcement duties.

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[44] Emphasis added.

IV.

IMPACT OF THE DECISION AND THE REQUIREMENTS IN THE COURT'S CHARGE

"We had a conviction blow in the Screws case."
Attorney General Tom C. Clark[45]

On the positive side, the Supreme Court decision upheld the statute as a sanction against violation of civil rights by state law enforcement officers, entering into an area earlier developed by lower federal court decisions.[46] Thus, forcing confessions by threats, assault, or torture; resorting to extortion, false arrest, imprisonment, and neglecting to protect a victim from mob violence and attempting to avoid criminal prosecution by divesting oneself of an official capacity while participating in illegal acts;[47] pursuing and killing a Negro without just cause[48]

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[45] Testimony of then Attorney General Clark before the Committee on the Judiciary, House of Representatives, 81st Congress, 1st and 2d Sessions. Hearings before Subcommittee 3. "Antilynching and Protection of Civil Rights." Washington, 1950, p. 74. "The uncertainty caused by the Court's interpretation of the statute has placed great obstacles in the path of the federal prosecutor . . ."

[46] Culp v. United States 131 F.2d. 93 (C.C.A. 8th) 1942. For the criminal provisions of Section 242, and other Civil Rights Acts, see Address of Arthur B. Caldwell, Esq., Assistant to the Assistant Attorney General, Civil Rights, reprinted in Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary on Civil Rights, 85th Cong., 1st Sess. (1957).

[47] Catlette v. United States, 132 F.2d. 902 (C.C.A. 4th) 1943.

[48] United States v. Trierweiler, 52 F.Supp. 4 (E.D. Ill.) 1943.

were encompassed within the protections. Violation of these would bring the statute into play. Empowering the federal government to use the statute against invasion of civil rights by state and local enforcement officials, where legal processes are often influenced by different kinds of prejudice, has become for many the only means of protection. The statute thus acts as a form of deterrence against possible violation. The major problems in Section 242 - its constitutional validity in relation to vindication of due process rights - had in Screws been resolved, but by a margin of one vote. The federal government could intrude into an area normally considered belonging to the states and their citizens; it could punish conduct not authorized by state law, but identified with it.

The very survival of the Civil Rights Section was assured by the Court's holding. Had the statute been struck down, the "sword" approach to civil rights protections would have been so blunted that, failing enactment by Congress of a new law, the Department of Justice could not have functioned in this area.

Again, on the positive side, it was thought by some within the Civil Rights Section that the very requirements placed upon the Department of Justice by the Screws decision would make of the statute's deficiency a virtue, permitting broader jurisdiction over a wider variety of offenses it could prosecute. The failure to include definite rights, protected and guaranteed under the statute, (excepting previously defined rights, privileges and immunities secured by the due process clause of the Fourteenth Amendment) could then prevent a narrow application of the law. Without question, the very fact that the case received such intensive judicial attention did serve to warn state and local officials generally of the existence of a federal law which could get them into grievous trouble unless they were careful in the application of their police powers.

Experience in prosecutions since 1945 has shown the limiting effect that Screws has had on the effectiveness of the statute. The requirements of specific intent, willful deprivation of a right to be tried by a court, and proof that the defendant intended to deprive the victim of his right to due process have proven to be serious obstacles to effective prosecution. In a criminal case generally, specific intent can be shown by establishing presumption. But where constitutional rights are involved and where the actual act may have no connection in the mind of the defendant to federal rights defined or interpreted in the Constitution, the problems become compounded. In addition, the requirement of constitutional specificity has been incorporated into the Court's charge to the jury, as

shown by the charge in the retrial, and in subsequent trials. The charge of the court takes into consideration the Screws dictum in a number of ways. First, the indictment under which the defendant is being tried and factors relating to the court's paraphrasing, elucidating, and reducing the statute to terms understandable by a jury are taken from the explanations offered in the opinion of Justice Douglas. Then, relevance of the action to the statute under which defendant is being tried must be explained by the court. While the charges may vary in language, there has developed since the Screws retrial a consistency and accuracy in presenting the requirements under the Screws holding that leave no doubt of the Court's intention that juries understand their responsibility to that of the defendants' acts in constitutional terms, and not as criminal acts only.[49] Some of the hardship in this area has been somewhat mitigated by the decision of a Court of Appeals in the Crews case,[50] holding that evidence that a police officer mistreated a prisoner out of personal malice or spite is not inconsistent with a conclusion that the officer also willfully intended to deprive his victim of

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[49] See, Crews v. United States, 160 F.2d 746 (C.C.A. 5, 1947), Case No. 7593 J. This is the first case of constitutional interest concerning the application of the Screws holding to the court's charge, since the retrial and charge in United States v. Screws, supra. "In order to convict it is necessary for the jury to find that the defendant had in mind the specific purpose of depriving (victim) of a Constitutional right . . . 'willfully' in the statute, makes 'intent' a material element of the offenses charged. . . . The proof of a general intent to do . . . wrong is not sufficient, but a specific intent to deprive him of a Constitutional right is a burden the law casts upon the Government . . ." But, a jury "may probe words, knowledge, experience, surroundings, acts, doings and results in order to decide the question of intent." Id. at 750.

Since the instruction of the court meets the requirement of the Screws majority it has been approved officially by the Fifth Circuit Court of Appeals and formed the basis for the charge given in the Minnick case delineated below, also in the Fifth Circuit.

[50] Ibid.

constitutional rights. Koehler v. United States[51] affirmed that instruction on presumed intent is within the rationale of the Screws requirement. Even when the improper action of the police is unauthorized or forbidden by state law the statute will apply, although the defense attorney is free to inject before the jury the question as to whether or not the defendant was thinking in constitutional terms at the time he resorted to force. Where the right protected is spelled out in the statute, or where the right implied is evidenced in specific police acts, there is a clear intent to invade a protected right.

The dissenting opinions of Justices Roberts, Frankfurter and Jackson express fears which have been evidenced in other courts, that the statute represents a "dangerous instrument of political intimidation and coercion in the hands of those so inclined." The statute weakens state responsibility and leads to an increase in the power of the federal government with the consequent danger of federal intrusion. The Screws decision must be read with this view of the minority clearly in mind. Undoubtedly this fear of federal encroachment is emphasized in those sections of the United States which may be ignorant of, or opposed to, Fourteenth Amendment rights in this context.

Screws became, in the final analysis, one of the most difficult obstacles to successful functioning by the federal government in the area of criminal civil rights. Had

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[51] 189 F.2d 711, 714, 715 (C.A. 5) 1951, cert. denied, 342 U.S. 852 (1951). The trial court, in instructing on the necessity of proving specific intent to deprive victim of a constitutional right, stated: "The color of the act determines the complexion of the intent. . . . When the deprivation of a constitutional right results from an act which is criminal under the laws of a State and has been intentionally committed, those facts may presume specific intention . . ." Justice Jackson dissented from denial of certiorari. "If this decision is allowed to stand it is a rather earlier fulfillment of the fears of those who dissented in Screws than I had anticipated." Justice Jackson complained that the effect of the challenged section of the trial court's charge was to put the burden of proof on the defendant to prove his lack of specific intent, a ". . . novel importation into American criminal law." Also on this case see Interalia, New York Times, April 26, 1959. The Department of Justice failed in attempt to obtain federal grand jury indictment. But see Pullen v. United States, 164 F.2d 756, 761 (C.A. 5) 1947, where the court held that conviction would be reversed if trial court did not point out difference between "bad purpose" and "willful" intent.

the statute been declared unconstitutional, it was almost certain that the challenge to enact a stronger criminal civil rights statute would not have been met by any Congress, from 1945 to the present. Accommodations have had to be made between the recognition of the Screws crime, and many similar cases since, as "revolting", exacerbated by the anger and frustration resulting from inadequate state action, or even cynical state inaction[52] with its impulsion to federal intervention, and the necessity to conduct such cases within the standards of criminal justice imposed by the Screws holding.

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[52]See statement of Attorney General Rogers in the N.Y. Times, June 15, 1959 re refusal of State of Mississippi to take any action in a lynching case (Mack Parker) involving removal of a Negro from the Poplarville jail. Attempt of government to indict under Section 242 also failed.

IV.

APPLYING THE STATUTE SINCE THE SCREWS DECISION

Williams v. United States[53] was the first decision by the Supreme Court since the Screws case. It clearly affirmed the holding in Screws that rights under the Fourteenth Amendment are protected by Section 242; that color of law includes misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law; and that extorting a confession is a clear violation of Section 242 and should be known as such by every law enforcement officer. Lynch v. United States,[54] as with other cases before[55] and since,[56] dealt with the deprivation of liberty, in this

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[53]341 U.S. 97 (1951). The trial judge charged in part that the "law denies to anyone acting under color of law, . . . the right to try a person by ordeal . . . in determining whether (the) requisite . . . willful intent was present . . . consider all the attendant circumstances . . . from the evidence that has been submitted . . ."

[54]189 F.2d 476 (1951), cert. den., 342 U.S. 831 (1951).

[55]See Sutherland, Culp, Catlette, Trierweiler cases, notes 46, 47, 48, supra. Screws, note 21 et seq.

[56]Crews, note 49 supra; Koehler, note 51 supra, Clark v. United States, 193 F.2d 294 (C.A. 5, 1951); Apodaca v. United States, 188 F.2d 932 (C.A. 10, 1951); United States v. Konovsky, 202 F.2d 721 (C.A. 7, 1953); Gowdy v. United States, 207 F.2d 730 (1953); Pool v. United States, 260 F.2d 57 (C.A. 9, 1958); United States v. Hunter, 214 F.2d 356 (C.A. 5, 1954), cert. den. 348 U.S. 888 (1954). This was the first attempt of the Civil Rights Division to invoke Section 242 against a state prosecutor, and the first case involving liberty as such, i.e. continued physical restraint and detention without due process of law. However, dismissal of indictment against the prosecutor by the district court was upheld despite the government's appeal. Justice Douglas dissented from the denial of certiorari. (Court of Appeals upheld dismissal of indictment under Section 242 charging a State Attorney of Florida had willfully detained a defendant in prison for 18 months after a jury acquitted him of a murder charge, holding that

case, the right to equal protection of the law against mob violence. Lynch filled a gap in the Screws holding by providing that there could be a denial of a constitutional right resulting from willful inaction of police. It would seem to afford protection from lynch mobs where police officials refuse or by inaction fail to protect their prisoners from injury sought to be inflicted by third persons. Perhaps this doctrine extends the scope of the statute - that a state may violate the Fourteenth Amendment by failure to give effective enforcement of its own laws. The

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there was no legal duty on his part to apply for the prisoner's release.) See also in this context United States v. Chaplin, 54 F. Supp. 926 (S.D. Cal., 1944). Denial of due process has also been successfully sustained in cases against prison officials who inflicted summary punishment upon prisoners: - United States v. Jones, 207 V. 2d 785 (C.A. 5, 1953); United States v. Walker, 216 F.2d 683 (C.A. 5, 1954), cert. den. 348 U.S. 959 (1955); United States v. Jackson, 235 F.2d 925 (C.A. 8, 1956). Convictions of conspiracy to violate Section 242 were upheld in Brown v. United States, 204 V. 2d 247 (C.A. 6, 1953) (extortion scheme, willful deprivation of property rights without due process of law, under color of authority). Section 242 protects against willful federal, state, and local infringement of other rights, where violent interference is a factor. See, Truax v. Corrigan, 257 U.S. 312 (1921) (right to conduct a lawful business); DeJonge v. Oregon, 299 U.S. 353 (1937) (freedom of speech); Grosjean v. American Press Co., 297 U.S. 233 (1936) (freedom of press); Hague v. C.I.O., 307 U.S. 496 (1939) (First Amendment, United States Constitution); Truax v. Raich, 239 U.S. 33 (1915) (to pursue a lawful calling); Cantwell v. Connecticut, 310 U.S. 296 (1940); Pierce v. Society of Sisters, 268 U.S. 510 (1925) (to express and exercise religious beliefs): Meyer v. Nebraska, 262 U.S. 390 (1923) (to establish a home); Wolf v. Colorado, 338 U.S. 25 (1948) (freedom from unlawful searches and seizures). Due process protections, in addition to those listed above derive from the following: Moore v. Dempsey, 261 U.S. 86 (1923) (the right to a fair trial, not a sham or pretended, hearing); Powell v. Alabama, 287 U.S. 45 (1932) (the right to be represented by counsel in certain types of criminal cases); Smith v. Texas, 311 U.S. 128 (1940), (the right to a jury from which members of the defendant's race have not been purposely excluded).

Section 242 may be utilized to punish official interference with rights protected against infringement by private persons. E.g., 312 U.S. 583 (1941) (the right of ac-

right to be free from false imprisonment was held to be within the protection of the statute, in the Koehler case,[57] which also held that willfulness can be inferred. Other rights, including those under the Fifth Amendment against federal deprivation, and equal protection rights under the Fourteenth Amendment are encompassed within Section 242. These rights, in addition to those fundamental to personal protection, are included within the scope of the statute, but do not come into play unless physical violence under color of law is involved.[58] Perhaps this doctrine extends the scope of the statute - that a state may violate the Fourteenth Amendment by failure to give effective enforcement of its own laws.

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cess to federal courts); In re Quarles and Butler, 158 U.S. 532 (1895) (the right to inform federal officers concerning federal offenses). Additional rights secured against infringement by the federal government, under the first eight amendments, include the right not to be twice put in jeopardy for the same offense, the right to a speedy and public trial in a criminal case, and the right not to be held in excessive bail or subjected to cruel and unusual punishment.

With regard to the application of Section 242 to desegregation of the public schools, see Blaustein and Ferguson, DESEGREGATION AND THE LAW (1957). The Civil Rights Commission Report, (1959) deals with the application of the statute to voting rights under the Civil Rights Act of 1957.

[57] Koehler v. United States, op. cit. supra. But see United States v. Hunter, op. cit. supra, note 56.

[58] Brewer v. Hoxie, 238 F.2d 91, (1956) lists the civil rights of citizens.

V.

CASE STUDY OF A PROSECUTION UNDER THE STATUTE - United States v. Paul V. Minnick[59]

"The awful instruments of the criminal law cannot be entrusted to a single functionary."[60]

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Testimony from Minnick case:[61]

Assistant United States Attorney Fred Botts: As an experienced police officer you are . . . aware that you are not justified in law in taking lives to overcome resistance to arrest for a misdemeanor . . .?

Defendant Officer Paul V. Minnick: That's correct, sir.

Botts: Then your sole purpose of firing into the body of Emmitt Jefferson (victim) was to protect yourself . . . not knowing whether it was a felony or a misdemeanor?

Minnick: He had committed a felony in my books, sir.

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[59]Although there were two trials of Officer Minnick, this study will examine the prosecution in Miami, Florida. Officer Minnick was tried in two District Courts, under two separate indictments charging offenses under Section 242. They were unrelated incidents. Minnick was first indicted in Washington, D. C., for an offense under the statute while a member of the Metropolitan Police Department. Although under indictment he left Washington and went to Homestead, Florida, where he was appointed a police officer. Five weeks later he had committed the offense which forms the basis for the delineation here. Information drawn from the files on the case in the Department of Justice, Civil Rights Division, Case No. 144-16-79 (District of Columbia trial).

[60]Justice Frankfurter, McNabb v. United States, 318 U.S. 332, 343, (1943).

[61]United States v. Paul V. Minnick, op cit. supra. Testimony drawn from file. Case No. 8466-M-Cr (D.C.S.D. Fla., Miami Division, 1953).

Botts: And you knew that if you . . . did kill him . . . he would have lost all of these precious Constitutional rights concerning which we have had our . . . talk, did you not?

Minnick: Under those circumstances he forfeited his rights, sir.

* * *

". . . those who decide to take the law into their own hands and act as prosecutor, jury, judge and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees to him . . . and such a purpose . . . may be reasonably inferred from all the circumstances attendant upon their acts . . ."[62]

The victims in criminal civil rights cases are often "ignorant, friendless persons, unaware of their rights, and without means of challenging those who have violated those rights."[63] Add to this description the existence of racial prejudice in a large number of these incidents and the restrictions imposed by the Screws holding on the Department of Justice and there inevitably follows a conclusion that the Minnick[64] case falls into the category of a prototype criminal civil rights violation. It would be an exaggeration to depict such occurrences as fitting into a pattern of police actions generally. The values to be derived from a study of this case flow from these facts: the aborted attempt at state action; the nature of the offense for which the victim was being apprehended; the deliberative, procedural and prosecutive efforts of the Department of Justice; and the conduct and result of the trial. Too often incidents of constitutional violation, while of interest and value in exhibiting the strengths, and weaknesses, of our judicial processes in serving as the final act expressive of federal authority overlook the values which derive from a delineation of the statute in

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[62] Charge of the Court, United States v. Screws, No. 1300 Cr. (D.C.M.D. Ga.), 1945.

[63] TO SECURE THESE RIGHTS. Report of the President's Committee on Civil Rights, Washington, 1947, p. 25.

[64] United States v. Paul V. Minnick, No. 8466-M Cr., (D.C.S.D. Fla.) June 23-26, 1953.

action. In that connection, Minnick will serve to illustrate the impact of Screws upon the federal government in its prosecutive effort. This will include the Department of Justice and the agency which handled the case, the Civil Rights Section, the United States Attorney's office, and the court, in its charge to the jury. Thus, Minnick will serve to express in factual form the conclusions to be arrived at regarding the status of 18 U.S.C. 242 as the substantive criminal civil rights statute of the federal government, its value as a prosecutive tool and the impact upon the Department of Justice, which has responsibility for enforcing it.

The rationale for selecting the Minnick case as illustrative of the major facets involved in a criminal civil rights prosecution are deduced from the resemblances it bore to Screws as the controlling Supreme Court case, and Crews, as a supportive case in regard to the elements of trial by ordeal, summary punishment, and death of the victim. The locale has connection, as does the factor of race difference. Unlike Crews, who was convicted and whose conviction was upheld, Minnick was able to profit from the tangible limitations which the Criminal Division of the Department of Justice felt compelled by the Screws requirements to impose upon its conduct of the case. The passage of seven years since the trial in 1953 have, in comparison with other cases studied, fixed it in the experience of the Civil Rights Division as a case which epitomizes the weaknesses of the statute. These weaknesses in turn have served to severely limit the functional vigor of the federal government in prosecuting similar offenses.

The trials and tribulations which Officer Minnick underwent are somewhat unique in that he was the defendant in two unrelated civil rights prosecutions.[65] In each trial Minnick was acquitted of the offense.

The facts of the Florida case are briefly as follows:

On Christmas morning, 1952, while driving along the highway near Florida City, a white woman was forced off the road by a car being driven by a "light skinned" Negro. Upon receiving the information, the local police proceeded to a migrant farm labor camp - Barnett's Quarters - where, after questioning the workers they attempted to arrest one Emmitt Jefferson. Jefferson, refusing to submit to arrest, got into his car, drove past a police roadblock which had

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[65] See footnote 63 supra. The facts in the incident depicted below are taken from the files on the case in the Department of Justice, Civil Rights Division, Case No. 144-18-253.

been set up, and arrived at the home of his father in nearby Homestead. Arriving immediately behind him, one police officer began beating Jefferson with a blackjack, at which point Officer Minnick arrived on the scene and shot Jefferson to death.

These are the facts of the incident. They are commonplace enough and would warrant no further consideration if it were not for the developments which followed. Officer Minnick was suspended from his post and was arrested on a first degree murder charge. On December 30, a Dade County grand jury returned a no bill. The local chapter of the National Association for the Advancement of Colored People wrote to the Department of Justice,[66] requesting an investigation to "repudiate or substandiate the findings of the grand jury", and the regional secretary of the NAACP urged Governor Fuller Warren to "stop the wanton shooting, and general brutal treatment and killing of Negroes by 'law enforcement officers'". Although the State was requested by the NAACP to file a murder charge, this was not done. Upon being apprised of these facts, the Attorney General requested the Criminal Division, of which the Civil Rights Section was then a part, to make a study of the incident (based upon a full investigation by the Federal Bureau of Investigation) to determine if it warranted federal intervention. The office of the United States Attorney in Miami was asked to cooperate with the FBI in assembling the material and pass on its findings to the Section. This would determine whether federal prosecution was to be instituted.[67]

Failing to obtain an indictment from the February Grand Jury, Minnick was arrested on the basis of a Commissioner's warrant. It had been the decision of the De-

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[66]Attorneys in the Civil Rights Section evaluated the complaints, as well as the preliminary investigation made by the FBI, and then requested the FBI to make further investigation to develop the complete picture with a view to presenting the matter to a federal grand jury if the facts warranted such procedure. The factor of jurisdiction, in which "willfulness" occupies the most controlling influence, determines whether prosecution will be instituted.

[67]Complaints involving civil rights, particularly police brutality cases, come for the most part through the Federal Bureau of Investigation. There are other sources, such as writing directly to the Department of Justice. A number of cases have been developed by attorneys in the Section through reading of newspapers. Under existing instructions, the FBI conducts a preliminary investigation without awaiting any request from the Section. When a

partment of Justice that a special assistant to the attorney general would proceed to Miami for the purpose of arranging the arrest of Minnick upon a complaint and arrest warrant, alleging a violation of Title 18, U.S.C. 242.[68]

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determination, based upon this preliminary investigation, indicates a possibility of a violation of the civil rights statute, the attorney in charge of the particular case prepares a memorandum requesting a full investigation which, after approval by the respective superior officer in the Section, is passed on to the FBI for execution. In conducting its investigation, the FBI advised the head of the Homestead Police Department, the attorney general, and governor of Florida of the allegations, and of the FBI's responsibility to investigate. The material resulting from its painstaking investigation was evaluated by the Assistant Attorney General, Criminal Division, and attorneys in the Civil Rights Section, and a conclusion was reached that Minnick's actions constituted an offense within the meaning of Section 242.

[68]Due to the local grand jury situation, making impossible an immediate presentation, the Department of Justice had decided to file a complaint with the United States Commissioner. The Justice Department felt dubious about the possibility of obtaining an indictment from another grand jury, because of the first no bill. They feared that a federal grand jury might not indict, since such action would have been considered as critical of the Dade County grand jury that had heard the case and had handed down a no bill. The Justice Department had considered the following problems and alternatives:

1. To present the case again to the same grand jury, with a larger attendance of members. (The February grand jury had only 16 members present, and had voted 9 for and 7 against indicting.) This was decided against.
2. Proceed by an information.
3. To present the case to a new grand jury. This was the procedure followed.

In civil rights matters, particularly in the Southern States, the experience of the Civil Rights Section has indicated a preference for prosecution based on indictment by a grand jury. Even if it appears from the testimony that a prosecution might be unsuccessful, this has not necessarily deterred the Section from presenting the case to a federal grand jury. The very act of prosecution, even when unsuccessful, it is believed, has resulted in a decrease in police brutality and related practices. Too many

On March 30 findings of the investigation[69] were presented to the Federal grand jury and an indictment was handed down.

The indictment[70] charged that Officer Minnick

> "did willfully subject . . . Emmitt Jefferson, to the deprivation of rights, privileges and immunities secured . . . and protected by the Fourteenth Amendment . . ., the right and privilege not to be deprived of life or liberty without due process of law; the right . . . to be secure in his person while being placed . . . in custody . . . acting pursuant to, or under color of, the laws of the State of Florida, and the authority of said City of Homestead . . . to be immune from illegal assault . . . by any person exercising the authority of said State . . . not to be summarily tried and executed by any person acting under color of the laws . . . the defendant . . . acting under color of the laws . . . did deprive . . . Emmitt Jefferson of his constitutional rights of aforesaid."

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failures, of course, diminish the fear of prosecution.

The United States Attorney in Miami expressed opposition to the issuing of a Commissioner's warrant and prosecution by an information. He preferred presenting the facts to the March grand jury. His opinion was that a Commissioner's warrant would make it necessary for the government to "tip their hand" as to the evidence available. (But see United States v. Catlette, supra, note 47, in which a conviction resulted following prosecution upon an information.) Presenting the matter to a federal grand jury is preferred because the prosecutions are almost always against a state law enforcement officer; the FBI can function more effectively if it doesn't have the responsibility of appearing against a member of some other law enforcement agency with which it must maintain working relationships; and the grand jury technique can shift the responsibility to a representative section of the local citizenry. Also, it gives the prosecutor an opportunity to evaluate how his witnesses will stand up when questioned under oath. Further, the grand jury proceedings are transcribed by stenographic reporters. These proceedings can be studied by the Justice Department and used as a basis for subsequent perjury prosecutions should a witness at a later time in the trial change his testimony. If the grand jury refuses to indict, the Department could still proceed by an information. (This, however, would be a discouraging introduction to any attempted prosecution. See C. A. Dilk v. United States, 132 F.2d 902 (4th Cir.

The Assistant United States Attorney, Fred Botts,[71] appointed as prosecutor, had tried a number of cases under Section 242. The experiences of "frustration and defeat" in most of these cases resulted, he felt, from the "giving of instructions" by the courts. Writing to the Assistant Attorney General, he explained that in three cases which had resulted in acquittals, the court's charges were the basis for the acquittals:[72]

> ". . . the courts apparently have held that the intent involved in the violation . . . is a different . . . intent from that involved in other criminal cases. . . . the appellate courts have said that it was not error to give the charges, which, . . . have caused most of the trouble, but they have not said that it would be error to give a charge which would

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1943).) Finally, charges of interference from Washington are avoided when a local grand jury has decided upon an indictment based on evidence presented by a United States Attorney who resides in the district in which the offense is committed, and who has responsibility for prosecution. (File No. 144-18-253 op. cit. supra.)

[69]Jim Jefferson, father of victim, told the grand jury he had pleaded with Minnick, "White folks, please don't shoot him. That is my son." File No. 144-18-253 op. cit. supra.

[70]Case No. 8466-M-Cr. (D.C.S.D. Fla., Miami Division, 1953).

[71]To Mr. Botts, the Minnick case was "utterly indefensible - vicious . . . I almost begged the Court to give a charge . . . which while not literally following the words of the Supreme Court, would have a good chance of being upheld. . . . But unfortunately, few judges, having the clear language of the Supreme Court as a pattern . . . will risk changing the language to give the prosecutor a chance even in a vicious case. Sometimes a fearless Judge may be found who will be so devoted to justice that he will risk a reversal, in the interests of justice, and give this charge. Thus it is that until there is legislative relief, or the Supreme Court can be induced to retreat somewhat from the language it has used, trial of these cases must be continued even though the prosecutor has little hope for success." Letter from Mr. Botts, July 25, 1958.

[72]Information drawn from file on the Minnick case No. 144-18-253, in the Civil Rights Division, Department of Justice, Washington.

> be more favorable to the Government. . . . it is common sense . . . to assume that in practically every case, while the defendant intended to do the act which, in effect, resulted in depriving the victim of constitutionally guaranteed rights, . . . in most, if not all these cases, the defendant did not consciously have thoughts of this specific intent. Probably the defendant never even thought concretely of the specific right involved, and almost surely, did not have any conscious thought that the rights of the victim so infringed upon was guaranteed and protected by the Constitution. Nevertheless, under the instructions . . . it is almost a foregone conclusion . . . there will be an acquittal.
>
> For these reasons, the interpretation of the statutes as reflected by the decisions, and embodied in the charges given by the Court, has . . . emasculated the statute to such an extent that effective enforcement is largely rendered impossible."

To the United States Attorney the approach was to induce the trial court to,

> "give an instruction as to intent which would be along the lines which are given and considered proper in other cases - that a person . . . is presumed to intend the natural and probable results of his act. . . . In case of a conviction under such a charge, there would then be an appeal, and the court would then be called on to determine whether or not it was error to give the more favorable charge . . ."

However, to the Department of Justice, the concern was with other problems. It was concerned with the narrow vote by which the Supreme Court had upheld the statute in the Screws case. Therefore it was not eager to challenge that decision:

> "Justices Murphy and Rutledge would have sustained the statute without construing 'willful' as Justice Douglas thought necessary. The views of these Justices, however, have not been adopted by the Court . . . Justices Frankfurter and Jackson (and Justice Roberts) . . . would have invalidated the statute . . . Justice Black now possibly has changed his position as to the statute (see the Williams cases). . ."
>
> The narrowness of the division becomes very evident when one refers to the Williams conspiracy case (341

> U.S. 70). . . . Had the Chief Justice joined (Justices Frankfurter, Jackson and Minton) . . . in the Section 242 Williams case (341 U.S. 97), . . . the statute would be invalid. Every reasonable effort must be made not to stretch the statute or to try to relax the strict requirements thereunder lest a fifth Justice join the dissenters . . ."

It was also pointed out that in Koehler v. United States,[73] Justice Jackson had emphasized again that, to him the statute was vague and "general in the extreme", but had significantly stated that "it is a well settled rule . . . that the intent is presumed and inferred from the result of the action", a charge that in his opinion was clearly erroneous. Again, in Brown v. Allen,[74] Justices Jackson and Frankfurter evidenced their awareness of the importance of these problems and of their doubts concerning Section 242. In that case Justice Jackson observed that Court of Appeals had:

> "upheld a conviction based on a charge that willfulness and intent are 'presumed and inferred from the result of the action.' . . . This court, against my written dissent . . . refused review."

Thus, to the Department of Justice it would have been dangerous to liberalize the charge on willfulness although this might have eased some of the burden imposed upon the Government. The United States Attorney was advised that the Department of Justice would not recommend relaxation of the rule that the charge must be phrased in the language of the Screws holding. It was suggested that he request the trial judge to elaborate upon the "attendant circumstances" aspect of Justice Douglas' opinion in Screws, upon the "reckless disregard" aspect, and to rephrase and enlarge upon the opinion of Justice Douglas regarding the immateriality of the requirement that the defendant must have been thinking in constitutional terms where the aim was not to enforce local law but to "deprive a citizen of a right . . . protected by the Constitution". However, under any circumstances, since it was better to

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[73] 342 U.S. 852 (1951). Communications between the Assistant United States Attorney and the Department of Justice in file on the Minnick case No. 144-18-253, Department of Justice, Civil Rights Division.

[74] 344 U.S. 443 (1953).

retain Section 242 than have no statute at all "it is absolutely imperative that prosecutions be brought only in clear cases and that the requirements of Screws and Williams be strictly followed."

The problem of Minnick's indictment in Washington was considered in the preparation of the case. However, since the Washington trial had not yet taken place, it was recommended that this information be withheld from the Miami jury on the basis of possible reversible error.[75] One exception to the hearsay rule, dealing with courses of conduct, probably would not be relevant since it could be shown only as one other incident similar to the one in issue. It might have been possible to challenge the defendant's reputation, and on cross-examination, to permit questions concerning the incident in Washington. However, this procedure was not followed.

The trial opened on June 23, 1953 before Judge George Whitehurst. Since the testimony[76] in the case ran to more than 300 pages, only those passages which relate to the offense at issue will be referred to:

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[75]The Department of Justice reminded Mr. Botts of the general rule excluding evidence of other crimes. It is "universally recognized and firmly established in all English-speaking lands, . . . is rooted in that jealous regard for the liberty of the individual which has distinguished our jurisprudence from all others . . ." which he quoted from the opinion of the court in Laughlin v. United States (92 F.2d 506, 1937). Proof of the offense committed in Washington probably would not have been admissible, since it could not be shown to have any relevance to the type of intent required under Section 242. To establish an offense under the statute it must be shown that a defendant had specific intent to deprive a victim of a right made definite by the Constitution, laws, or decisions of the courts, and to establish proof that he had assaulted a person in his custody at an earlier date in Washington would not show that he possessed the requisite specific intent when he killed Jefferson in Florida. The Government could rebut any evidence introduced by the defendant to show his good character (he had received a "Policeman of the Month" award in Washington some time prior to the indictment in that city). Here the Washington indictment could be introduced.

[76]Excerpted testimony taken from United States v. Paul V. Minnick, Case No. 8466-M-Cr. (U.S.D.C.S.D. Fla., Miami Division, 1953). The testimony has been compressed where accuracy was not affected.

Direct Examination by United States Attorney Botts

Witness: Officer Fasulo, Florida City Police: The call I received would have been on reckless driving and drunk driving . . . I put him under arrest . . . he made a getaway . . . I called for one of the Homestead police cars and . . . chased him down the road . . . he turned in this driveway . . . of his father's place. . . . When he pulled up . . . and stepped out and started running . . . that's when I grabbed him and . . . we started scuffling. I had my blackjack in my hand, brought it back to hit him, and I heard shots . . . and I looked over and saw Officer Minnick standing with a gun in his hand . . .

United States Attorney Botts: So far as you observed, was Jefferson armed in any way?

Officer Fasulo: I didn't see nothing.

Witness: James Jefferson (father of victim); Well, he (defendant) had his gun in his hand . . . and then he fired. I say, 'Don't shoot. That's my son. . . . If he done something I'll pay it'. . . . When he shot next time I started back toward him. He said, 'Get back, old man, I shoot you.'

Defense Counsel Robert K. Bell:

MOTION TO QUASH INDICTMENT[77]

1. Said indictment wholly fails to charge the Defendant with any act or omission punishable under the Constitution . . .
2. The indictment is too vague, . . . so as to apprise the Defendant of the nature . . . of the accusation against him . . .
4. Said indictment purports to charge the Defendant with denying (victim) a hypothetical, constitutional right or privilege . . . "the right and privilege to be arrested in an orderly manner and in accordance with due process of law.".
6. It affirmatively appears that each and every alleged violation of the civil rights of (victim),

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[77]The defense, in this procedure, followed the line of attack upon the indictment similar to that used in the Screws retrial. United States v. Screws, et al., No. 1300-Criminal, D.C.M.D. Ga. (1945).

> if true, stem from an act which would constitute an offense punishable by the laws of the State of Florida, . . . and that the alleged charges . . . do not come within the intent and purview of the Federal Statutes or Constitution.

Failing to succeed in having the indictment dismissed, the defense counsel, after the first day's questioning of witnesses by the Government, moved for a directed verdict of judgment of acquittal on the grounds that:

1. The Government . . . wholly failed to prove defendant's guilt beyond and to the exclusion of every reasonable doubt.
2. . . . the Government . . . failed to prove that the defendant possessed any intent or committed any willful act from which an intent might be imputed to deny (victim) any Constitutional right . . .
3. . . . the only issue that could be evolved from the testimony . . . is whether or not the defendant might have used more force than was necessary and whether he might have violated some statute of the State of Florida.[78]

This motion was overruled. The defendant took the stand, to be questioned by his counsel:

Mr. Bell, defense counsel: Now, Mr. Minnick, did you ever intend to take the life of Emmitt Jefferson . . . to prevent him from being lawfully arrested . . . or from being tried by a court of justice . . . and until this entire event was over did you know why Officer Fasulo had attempted to arrest Emmitt Jefferson?

Defendant: No, sir.

Mr. Bell: Did you use any greater degree of force . . . than you in your judgment thought was necessary . . . were you shooting to kill?

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[78]It is interesting to observe the emphasis placed upon any possible culpable act of defendant as being, at most, a state offense. For this the defendant had not been indicted. Since the jury will have to pass judgment upon the relevance of the offense to a constitutional right, such an attack upon the constitutional issue by the defense counsel will find its way into the court's instruction to the jury by way of defendant's requested points for charge.

Defendant: No, sir.

Mr. Bell: Could he have had a lawful, legal, peaceful arrest had he submitted to it?

Defendant: Long time before that; yes, sir.

Cross Examination by Mr. Botts:[79]

The United States attorney, in the cross examination, introduced a new procedure not heretofore followed in previous cases. It was intended to overcome the expected unfavorable instruction from the court. Mr. Botts first qualified Officer Minnick as an experienced policeman. Minnick promptly admitted he was a very experienced officer who understood the procedure with reference to arrests.

Mr. Botts: . . . By the way, I have forgotten whether you stated - I believe you did that you were a police officer in the District of Columbia for some time?

Mr. Bell: Now, if your Honor please, I do not notice anything on the record with reference to that.

Mr. Botts: If it is not, I want to ask him.

The Court: Proceed.

Defendant: Yes sir, . . . approximately ten years.

Mr. Botts: When this incident happened you had been here, I believe you said, four or five months . . .?

Defendant: Thirty-five days.

Mr. Botts: And by the way, would you mind telling us what education you received, . . .

Defendant: Start of the first year of high school, sir.

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[79]This was as far as the Government attorneys felt they could go, without risking introducing Minnick's Washington indictment. See file No. 144-18-253 op. cit. supra. The charge in the Crews trial was officially approved for use in the district courts of Florida.

Mr. Botts: What made you think it (the "weapon", Minnick said he had seen in Jefferson's hand. They were car keys.) was a weapon?

Defendant: By his expression, by the words he used, his attitude, aggressiveness, and sanity.

Mr. Botts: . . . Now as an experienced officer . . . you were aware . . . that in making an arrest you were or are not permitted to use more force than necessary to overcome resistance? For a misdemeanor?

Defendant: Yes, sir. I did not know that he was being arrested for a misdemeanor. I did it to protect my life.

Mr. Botts: Then your sole purpose of firing . . . was to protect yourself . . . not knowing whether it was a felony or a misdemeanor?

Defendant: He had committed a felony in my books, sir.

Mr. Botts: Mr. Minnick, as an experienced police officer you knew . . . that (victim) had a Constitutional right not to be deprived of life or liberty without due process of law . . . and you had that in mind at that occasion . . . and at the time when you shot him you knew he had that right . . . that he had a right to be secure in person . . . unless of course he resisted or otherwise forced the arresting officer to kill or injure him . . . that he had a right not to be subjected to punishment of any sort except by due process of law . . . that he had a right to be immune from illegal assault . . . and while you did not stop to think about that exactly you knew that as an officer at that time . . . that he had a right to be tried in a court in an orderly manner by due process of law . . . and because you knew those other things you also knew that he had a right under the Constitution not to be summarily on the spot tried and executed by a person acting under color of the law . . .?

Defendant: Yes, sir.

To all of which the defendant's counsel questioned Officer Minnick in such a manner as to refute any imputation of an intent to deprive the victim of any constitutional right.

Judge Whitehurst, in his charge to the jury, carefully and correctly followed the charge that had been developed in the Crews[80] case, which in turn had followed the charge of Judge Strum in the Screws[81] retrial. The jury was instructed that unless they "found Minnick specifically intended to deprive . . . Jefferson of his constitutionally guaranteed rights when he shot him . . . they could not convict . . . that even if they felt Minnick was guilty of murder it would not necessarily follow that he had violated the Civil Rights statute".[82] So pleased was the defense counsel with the court's charge that, after comparing it with his own requested points for charge, he concluded that "the requirements for conviction that the judge constructed from the Screws holding were fair, and covered the field" so completely that his requested points for charge were inserted in the record but not read,[83] except one significant point which Judge Whitehurst did read to the jury:

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[80] Crews v. United States, 160 F.2d 746 (C.C.A. 5, 1947). Case No. 7593 J.

[81] United States v. Screws, No. 1300 Cr. D.C.M.D. Ga. (Nov. 1, 1945).

[82] This portion of the charge drawn from the file on the case, No. 144-18-253, Civil Rights Division, Department of Justice, Washington.

[83] Notes taken from telephone conversation with Mr. Bell, November 30, 1959. Other requested points for charge by defense counsel, and covered in the court's charge were:

> "The Defendant . . . is not charged with murder . . . and we are not . . . concerned with whether the Defendant necessarily intended to kill the deceased but whether or not in taking the life . . . he intended to deny him the constitutional rights enumerated in the indictment; in considering whether the Defendant intended to deny the deceased the right and privilege to be secure . . . while being placed . . . in custody . . . you should consider the deceased resisted arrest and also whether he was given the opportunity to submit to arrest . . . it is not necessary for you to find in this case that the taking of the life of Emmitt Jefferson was justifiable in order to acquit . . . if you find . . . that the Defendant did not . . . shoot . . . with the intention . . . of depriving him of such constitutional rights . . . then it would be your duty to acquit regardless of whether you believed he had committed an assault and batter, manslaughter or murder . . ."

> "To convict the Defendant of the charge contained in this indictment, it is necessary that you first find from the evidence beyond and to the exclusion of every reasonable doubt that the Defendant took the life of Emmitt Jefferson with the intention of denying Emmitt Jefferson either or all of these constitutional rights which have been enumerated. It is not enough to convict upon this charge that the Defendant may have had a bad purpose in firing the fatal shot; for example, if you find from the evidence that the Defendant in carrying out his duties as an officer of the law, approached the scene . . . and that the Defendant in attempting to make an arrest . . . may have used more force than was necessary to effect that arrest, which . . . resulted in the death of Emmitt Jefferson, this in itself is not enough to convict the Defendant of intentionally denying Emmitt Jefferson those constitutional rights enumerated in the indictment."

The jury was out 4 hours and 45 minutes, returning once for a rereading of that portion of the charge relating to "willful" deprivation of rights. The verdict of acquittal was not unexpected by the Government despite its belief that it had a very strong case.

Some comfort may have been intended in a memorandum from the Department of Justice in Washington to Mr. Botts. In retrospect of the entire proceedings, in this and other unsuccessful prosecutions under this statute, this may indicate the resignation with which the Department of Justice views its handicaps under the statute:[84]

> ". . . it may perhaps be found to have been a most fortunate occurrence since the punishment that can be assessed for murder or manslaughter under state law is much more appropriate than the one year, $1,000 fine maximum prescribed under the Civil Rights statute."

The jury foreman said that the ". . . general consensus was that Minnick was guilty of manslaughter or second de-

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The Government's Requested Charges do not appear in the transcript, which is not unusual in such cases where defendant is acquitted and where there is no basis for an appeal.

[84] File No. 144-18-253.

gree murder . . . and that the state authorities should do something about prosecuting him. There was no way to get around the instructions".[85] "We would have liked to convict this man, but we could do nothing else (but acquit) under the judge's charge."[86]

Following the acquittal the Justice Department advised Mr. Botts to provide the State Attorney for Dade County with a transcript of the testimony, but directed him not to go to the foreman of the Dade County Grand Jury.[87] So deeply did the United States Attorney feel[88] regarding the acquittal that he continued to make efforts to have the State of Florida reopen the case for prosecution.[89]

On June 30 the State's Attorney announced that in view of the civil rights trial and statements of jurors who

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[85] Ibid.

[86] Ibid. Statement of a juror to United States Attorney Botts.

[87] Letter from Botts to George A. Brautigam, State Attorney for Dade County:

> "I feel very strongly that there will be a grave miscarriage of justice if this man is allowed to continue unwhipped of justice . . . I strongly urge that you give me a chance, which you seem reluctant to do, to acquaint you with the true facts so that justice may be done."

The view of the Department of Justice was that it,

> "would not be desirable . . . personally to consult with the foreman of the Grand Jury. The Department could be embarrassed and the State's case . . . seriously prejudiced if it became known that the Office of the United States Attorney or the Department is communicating directly with the State Grand Jury and is still trying to have Minnick convicted notwithstanding that he has been cleared by one Federal Grand Jury, one State Jury, and one Federal Trial Jury".

[88] Ibid. Mr. Botts continued to urge the State Attorney for Dade County to take action under Florida Law. See footnote following.

[89] "It was clearly established that the shooting was without necessity, even assuming that the attempted arrest was lawful and (there is grave doubt on this question, since the offense involved was at most a misdemeanor and was not committed in the presence of the officer). The officer knew (his own testimony) that the offense for which the man was suspected was misdemeanor . . ." File No. 144-18-253. Letter from Botts to Brautigam. 7/16/53.

tried the case,[90] he intended to reopen the case against Minnick to consider prosecution on a murder charge. An offer of "full cooperation and assistance" from the Justice Department was immediately forthcoming, to redress what it considered an "apparent miscarriage of justice". A number of jurors who had served in the federal trial were interrogated by the State's Attorney. His conclusion was that inasmuch as a state grand jury had, in 1952, returned a no true bill, he would recommend to the present grand jury that no action be considered. The case was then closed.[91]

There remained for Minnick another trial - this time for the offense in Washington. This, too, resulted in acquittal, following the court's charge, which followed the prescription laid down in the Screws retrial.[92]

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[90] Ibid. Under the Florida system of criminal prosecution in 1953 the State's Attorney would prosecute capital offenses. However, he is the legal adviser to the grand jury, and it could indict for lesser offenses, in which case the indictment is certified to the County Solicitor, who would prosecute all offenses less than capital.

[91] Ibid. Also Miami Daily News, 11/5/53.

[92] Ibid. File No. 144-16-79. Minnick was acquitted on February 16, 1954. During direct examination by defense counsel Minnick specifically denied having any intention to deprive the victim of his civil rights. The prosecution was instructed to study the charge to the jury in the Crews case since that was successfully terminated and conviction upheld on appeal.

VI.

THE CIVIL RIGHTS DIVISION

"Its activities have forced a change in our constitutional philosophy, providing in addition to the Constitution the 'shield' - a new instrument - a 'sword' - to strike telling blows against those government officers and others who violate civil rights."[93]

"An already overburdened Department of Justice, . . . cannot be expected to devote its energies to supervising local police activities and prosecuting police officers, except in rare and occasional instances. . . . The hostility which such prosecutions have received here (See Screws v. United States)[94] . . . hardly encourages putting the federal prosecutor on the track of state officials who take unconstitutional short cuts in enforcing state laws . . ."[95]

On December 9, 1957, the Civil Rights Section was detached from the Criminal Division and raised to Division status in implementation of the Civil Rights Act of September 9, 1957.[96] Within the Division a Constitutional Rights Unit[97] has,

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[93]Carr, FEDERAL PROTECTION OF CIVIL RIGHTS, 1947, p. 210, referring to the Civil Rights Section of the Criminal Division.

[94]325 U.S. 91 (1945), especially pp. 138 et seq.

[95]Justice Douglas, dissenting in Irvine v. California, 347 U.S. 128, 152 (1954).

[96]Pub. Law 85-315, 71 Stat. 637, 1957. The original Civil Rights Unit, unlike the Division, was not created as a result of legislative enactment; it resulted from an administrative order of Attorney General Frank Murphy. (Order of the Attorney General, n. 3204, Feb. 3, 1939.) The Unit assumed among its responsibilities the "aggressive protection of fundamental rights . . .", and aimed to "pursue a program of vigilant action in the prosecution of any infringement of these rights."

[97]On Oct. 22, 1959 the Due Process and Equal Protection units were brought together into a single Constitutional Rights Unit. Hearings before the Subcommittee of the Committee on Appropriations. House of Representatives, 86th Cong., 2d Sess., Washington, 1960, pp. 191-193.

> "cognizance of all matters and cases involving alleged denial of due process of law under the 5th or 14th amendments, and those arising under . . . Sections 241 and 242 . . . which involve an alleged denial of the equal protection of the laws . . ."

The actual preparation of cases under Section 242, as well as the other statutes within the area of Division responsibility, is in the hands of a Trial Staff.[98] This is composed of attorneys from the Appeals and Research Section and the Constitutional Rights Unit. It is they who conduct grand jury investigations, provide assistance to United States attorneys in both the presentation of evidence to a federal grand jury as well as in court proceedings involving the federal government.[99]

In the dissenting opinions of Justices Roberts, Frankfurter, and Jackson in the Screws case[100] it was stated that,

> "The Department of Justice, deeming vigorous enforcement undesirable, has imposed on itself 'a policy of strict self-limitation with regard to prosecution under the civil rights acts' in which less than one percent of complaints are fully investigated and less than a tenth of one percent are brought to trial."

The Civil Rights Division has not considered its function that of a national policing agency. Its operations are held strictly within a self-limiting area insofar as Section 242 is concerned. This arises out of the tenuous condition of the statute with which it has to work. It was anticipated that establishment of the Division would result in an increased number of complaints, many more of which would be considered as violative of Section 242. The factors in the increase became apparent following the

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[98] Ibid., p. 194.

[99] Ibid. The Trial Staff is presently handling cases involving alleged civil rights violations by members and former members of the Dayton (Ohio) Police Department. United States v. Beckett, et al. For a summary of action taken by the Civil Rights Division under Section 242 during 1958 and 1959 see Appendix II. For convictions and sentences see report of Administrator, United States Courts, Appendix III.

[100] Screws v. United States, 325 U.S. 91 (1945).

Supreme Court decision in the School Segregation Cases[101] and those involving public accommodations. Desegregation procedures primarily involve state officers. Resistance, as in Little Rock, Arkansas, which erupts into "color of law" violence has resulted in pressure for aggressive action by the Division. Other manifestations of contemporary civil rights pressures often result in acts of state officers which may be encompassed within the statute. Emphasis upon an "expanded program of liaison and consultation with law-enforcement agencies . . . of States in order to . . . encourage proper State action . . . and to place State and Federal responsibilities in proper perspective; . . . the collection of complete factual information on developments in the field of civil rights"[102] the right to vote laws and their ramifications and manifestations should endow the Division with challenging and heavy responsibilities, successfully carried out. However, any positive conclusions as to successes in this area would not be in keeping with the facts as they have evidenced themselves. Consideration of the reasons[103] for the Division's ineffectiveness reveal the following: the hostility with which the Division's functions have

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[101] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); Brown v. Board of Education, 349 U.S. 294 (1955). Browder v. Gayle, 142 F. Supp. 707 (M.D.A.a. 1956), aff'd per curiam, 352 U.S. 903 (1956). See also Greenberg, RACE RELATIONS AND AMERICAN LAW, N.Y., 1959, especially chs. II, V, IX.

[102] Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, 86th Cong., 1st Sess., pp. 191-205. Assistant Attorney General White, ". . . by far the most important new work that has been done . . . since we organized was the basic work . . . under the new act of 1957. We have compiled and digested the election laws of all the States. . . . The police brutality cases, . . . are not racial cases . . ."

[103] For an earlier critique of the then Civil Rights Section see, TO SECURE THESE RIGHTS. Report of the President's (Truman) Committee on Civil Rights. Washington, 1947.

been viewed by state officers[104] and some members of Congress,[105] the problems involved in obtaining indictments[106] from federal grand juries which are sometimes hostile,[107] the resistance of many local police departments[108] to the investigatory processes of the FBI, and, as evidenced in the Minnick case, the reluctance of the FBI to complicate

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[104]See criticism by Governors of Pennsylvania, New York, and Virginia of FBI for "invading" police powers of states by investigating alleged brutality against inmates of state institutions. The New York Times, Aug. 4, 26, 1953. "In the handling of new complaints, it is the purpose of the Division, to the extent permitted by personnel limitations, to explore the problems . . . with the officials of the State concerned and to aid in correcting any conditions which may have given rise to the specific complaints." Hearings before the Subcommittee on Appropriations, H.R., 86th Cong., 1st Sess., 1959.

[105]See, for example, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 86th Cong., 1st Sess., Part 2, 1959. Criticism of the Civil Rights Division was marked throughout much of the testimony, particularly pp. 1080-1081. See also REPORT of the United States Commission on Civil Rights, Washington, 1959:

"Some of the members of the subcommittee (Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 1st Sess., 1959, pp. 189-194) were apparently not impressed with the record of the Civil Rights Division. A large part of its energies . . . had been channeled into compiling statistics and . . . digesting State election laws . . . its legal actions were disappointing in number, nature, and results."

This criticism referred specifically to enforcement of the Civil Rights Act of 1957. The views of some members of the Subcommittee were critical also of the Division in regard to prosecutions under Sec. 242. See particulary pp. 195-218.

In the Hearings before the Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 2d Sess., 1960, pp. 208-209, Congressman John J. Rooney (D) N.Y., said: "This . . . Division . . . should have been part of the Criminal Division, rather than as it is now. . . . The Criminal Division would have done a better job." Congressman Rooney has been unconvinced regarding the value of some of the Division's activities which he considers are unrelated to its primary function, that of prosecuting violations of the civil rights statutes. His criticisms were similar to those noted in the Report of the United States Commission on Civil Rights, 1959.

its working relationships with police departments by arresting officers on complaints. These are in addition to the self-limiting function as viewed within the Section itself, and contemporarily, the Division. In addition there is the necessity of keeping each local situation in mind in determining jurisdiction. Where there are no regional offices, the Division must rely upon information

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[106]See statement of former Assistant Attorney General Warren B. Olney III, in 103 Cong. Rec. 11640-1, 11645-7, and 12156-7, (July 26 and Aug. 1, 1957), Washington. Also, a statement by W. Wilson White, former Assistant Attorney General, Civil Rights Division, made at Hearings before the Subcommittee of the Committee on Appropriations, H.R., 85th Cong., 2d Sess., Washington, 1958, p. 97: "In some areas, there has been so much resistance to Federal intervention in the civil rights field, that the local police . . . will shut their eyes to violations going on."

[107]Of particular interest in this connection are the Dawson, Georgia incident and the efforts of the Justice Department to obtain indictments under Section 242 there, and in the Mack Parker case in Poplarville, Miss. These failures indicate the difficulties the Justice Department faces in attempting to prosecute police officials in some sections of the Deep South. For the Dawson case see INTIMIDATION, REPRISAL, AND VIOLENCE IN THE SOUTH'S RACIAL CRISIS, op. cit. supra, the Washington Post and Times Herald, June 8, 1958, and the New York Times, Aug. 10, 1958. In the Mack Charles Parker lynching the attempt of the Department of Justice to obtain a federal indictment under Sec. 242 failed. Federal intervention was attempted after a state grand jury had disregarded evidence contained in a file assembled by the FBI and presented to the governor of the state and presumably other state officers, as well as the grand jury.

[108]Testimony on an alleged "agreement" between the Department of Justice and the Police Department of New York City, whereby the Department of Justice would defer any action regarding investigating acts of police brutality until the New York City police had first acted. See INVESTIGATION OF THE DEPARTMENT OF JUSTICE. Hearings before the Special Subcommittee to Investigate the Department of Justice. Committee on the Judiciary, H.R., 83rd Cong., 1st Sess., on H. Res. 50, 1953, pp. 1-294.

The Civil Rights Division has developed a working liaison on cases involving civil rights with New York, Pennsylvania, and Massachusetts under which authorities are notified of substantial complaints of violations and the prac-

supplied by local officers or other officials including the United States attorneys who are local residents and whose actions and reactions are often influenced by local pressures. Thus, placing "State and Federal responsibilities in proper perspective"[109] too often will mean becoming immobilized by pressures which tend to negate successful federal intervention when that course of action becomes imperative.[110] Difficulties in prosecuting and the low number of convictions when juxtaposed against the statistics

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tices corrected. This is done where ". . . police practices are really violations of due process of law but . . . cannot be prosecuted (by the Civil Rights Division) for one reason or another . . ." See, Hearings before the Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 1st Sess., 1959, p. 202. These are the only states in which there is a regular working liaison on such cases. ". . . in several Southern States a situation may arise involving a deprivation of constitutional rights, . . . and where the State authorities indicated they were taking action in good faith, the Civil Rights Division cooperated either by exchange of information, or by deferring to their action." Ibid., p. 213. The danger is that if state action proves inadequate in terms of legal remedy or prevention, the federal government, if it is to move, must do so under a handicap. But see footnote 108 supra, INVESTIGATION, etc. The FBI has for several years conducted special civil rights schools . . . resulting from the emphasis placed upon the law enforcement officer's "role as a guardian of individual rights and privileges . . . (and) to assist in better equipping police to meet this critical obligation . . ." ANNUAL REPORT, Attorney General of the United States, Washington, 1957, p. 192.

[109] Departments of State and Justice. The Judiciary, and Related Agencies Appropriations for 1960. Hearings before the Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 1st Sess., 1959, p. 191.

[110] The Civil Rights Division has been accused of being "plodding when it should have been imaginative, timid instead of courageous, sluggish when swift action was needed . . ." The New York Times, Sept. 14, 1959. The editorial was a reflection of the criticism of the Division by the Commission on Civil Rights. See REPORT, United States Commission on Civil Rights, Washington, 1959.

on sentences imposed[111] add to the disabilities experienced by the Division.

The difficulties[112] encountered in the approval of the new assistant attorney general to head the Civil Rights Division is a reflection of the opposition within the Senate Judiciary Committee to the federal civil rights function. Certainly such opposition has not invigorated the Division. The result has been disappointing in terms of leadership and results. The Division, with its manifold statutory[113] responsibilities, has been functioning with fewer attorneys than many other federal bureaus and agencies of lesser importance.

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[111] See Appendix III for analysis of sentences under Section 242. See especially United States v. James H. Dunn, Earl Chesser, et al. (D.C.N.D. Fla.) On August 8, 1960 the Federal District Judge granted a directed verdict of acquittal on the Section 242 indictments for 14 former prison guards accused of torturing prisoners at Raiford State Prison, after a six-week trial. The judge dismissed on two grounds: the doctrine of the Screws holding, and failure of the Government to submit sufficient proof of intent to warrant continuing the case to a jury verdict. This was on a motion by defense counsel to dismiss the Government's indictments after attorneys for the Civil Rights Division had presented their case. The judge also dismissed the conspiracy (241) charges. Philadelphia Inquirer, Aug. 9, 1960. Also, Evening Bulletin, Philadelphia, Aug. 9, 1960.

Federal Judge Bryan Simpson ruled the government failed to prove intent.

[112] W. Wilson White was appointed by President Eisenhower to be Assistant Attorney General, Civil Rights Division, on December 9, 1957. The appointment remained in the Senate Judiciary Committee until action was taken on August 18, 1958. The confirmation was delayed despite the fact that Mr. White had previously been confirmed for a position of similar rank - Assistant Attorney General, Office of Legal Counsel. Following Mr. White's resignation on Sept. 28, 1959, a delay of four months ensued until a successor, Harold R. Taylor Jr. was nominated on January 26, 1960. (J. M. F. Ryan, First Assistant Attorney General directed the business of the Division until Mr. Tyler was nominated.) Mr. Tyler is serving in an interim appointment, pending action by the Senate Judiciary Committee. He was finally given a hearing on June 29. Three of the five members of the subcommittee are Southern Democrats. The two Republican members gave Mr. Tyler "little support" during the hearings. See The New York Times, June 30, 1960. The subcommittee has not yet acted on the appointments of August 15, 1960. Thus in the three years of its existence as a Division there have

Perhaps these difficulties have reflected the Division's feelings of frustration from which it must suffer as it contemplates its problems in and out of court.[114] Nevertheless, the Division continues to act upon complaints, to investigate, and, where indictments have been obtained, to prosecute. It also has embarked "on a large scale due process type of enforcement . . . to move against organized denial of citizen's rights".[115] The Division has been criticized for not moving to prosecute by an information where indictments have not been forthcoming. It might have attempted such prosecution in the Dawson,[116] and Poplarville[117] cases. Such action, even if it resulted in acquittals, could have had a salutary effect upon those communities, their police, the states concerned - Georgia and Mississippi, and the Civil Rights Division. Prosecution, despite an adverse decision, would have indicated a determination, courageously carried out, to enforce the statute. At the same time, failure to convict in two such highly publicized incidents might have stimulated Congress into taking some action on the statute. These were opportunities lost. They have not yet been retrieved. Reflections upon the administration of justice in the United States have led the Commission on

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been three assistant attorneys general, only one of whom received approval by the Senate Judiciary Committee, and he only after a wait of more than eight months. This is not the way to enhance the operational vigor of the Civil Rights Division.

[113] See Appendix I concerning jurisdiction of Civil Rights Division. The Division has 29 attorneys at present.

[114] Discussing the difficulties in prosecuting, and obtaining convictions the then Acting Assistant Attorney General Ryan noted that "many judges have to be educated to the Federal-State relationship particularly in this civil rights field" and that in the case of United States v. Beckett, et al. (D.C. Ohio) (which had not yet been concluded) the "judge . . . was not correct in throwing it out (one of the indictments) because the injuries incurred were not substantial enough." When Mr. Ryan was criticized by members of the Subcommittee for this reflection on a member of the Federal judiciary he withdrew the criticism. The net effect was not one to endear the Division to the subcommittee or the judge. See, Hearings Before the Subcommittee of the Committee on Appropriations, 86th Cong ., 2d Sess., Washington, 1960.

[115] See statement of prosecutions under way, and pending, in Hearings, op. cit. supra, p. 200.

[116] See note 107 supra.

[117] Ibid.

Civil Rights to enter into a study of this field.[118]

The basic test of the administration of justice is not evaluated by the number of offenders convicted. Rather it is to be found in the diligence, the vigor, and the zeal with which the innocent are protected, the offenders prosecuted. It is by this standard that we must judge the efforts of the Civil Rights Division. The 'sword' is not sharp. Initially dull, it has become further blunted by the inhibitions placed upon it by the Screws holding and by the self-imposed limitations of function placed upon the Civil Rights Division. Congressional inaction in this area, and the negative approach to civil rights protections in some states have served only to compound the limitations.

This critique of the Division must be evaluated against the continuing efforts of the professional staff to move ahead with its manifold responsibilities. A measurable decrease in police brutality and kindred practices has been claimed as a positive result of federal action, as a deterrent at times, and as a punitive weapon where mediation or education do not succeed. Awareness of the statute and the undesirability of federal prosecution, with the possibility of conviction for a federal crime, are undoubtedly of value. Convictions, since Crews, Williams, Catlette, et al., down to Pool, evidence the many successes[119] which have attended the efforts of the Civil Rights Division. Its conscientous and vigorous effort in Minnick, while a failure, if acquittal is to be interpreted as failure, must have effects of a deterring nature. They are the positive factors in the evaluation.

The goal of the Division's efforts is to,

> "vindicate the constitutionally protected rights of individuals . . . to give meaning to the law by giving evidence of punitive efforts . . . the purpose of civil rights prosecutions is remedial rather than punitive . . . "[120]

It is in this context that the Division's efforts should be evaluated.

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[118] The New York Times, Sept. 14, 1959.

[119] See Hearings before the Senate Subcommittee of the Committee on Appropriations, H.R., 86th Cong., 2d Sess., pp. 189-193 for discussion of cases resulting in conviction under Section 242.

[120] Federal Enforcement of Civil Rights. Address by Arthur B. Caldwell, Assistant to the Assistant Attorney General, Criminal Division, Department of Justice, Washington, 1957.

VII.

18 U.S.C. 242 - PROPOSED AMENDATORY LEGISLATION

"If Congress desires to give the act wider scope, it may find ways of doing so."[121]

". . . can never be a very strong reed for a positive program of federal protection of civil rights, and the Court will never be free from difficulties in interpreting it. Congressional adoption of new legislation is desperately needed."[122]

"Committee attention is invited to section(s) . . . 242 . . . The Committee may wish to consider the desirability of amending these statutes to increase the penalties applicable to violations . . . which result in serious injury or death, thereby permitting the imposition of more appropriate penal sanctions in cases involving crimes of such gravity . . ."[123]

Legislation directed toward strengthening criminal penalties for violations of civil rights by public officers, under color of law, appear to date back to a bill proposed in the 68th Congress[124] by Senator Borah to "protect persons in the exercise of privileges and immunities guaranteed and secured by the Constitution . . . and set forth penalties for the intimidation by public officers of persons in the exercise of their legal rights". From that time to the present numerous bills have been introduced on the general subject of civil rights, many seeking to remedy the defects in the statute evidenced in the Screws decision and the resulting limitations imposed on the pro-

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[121] Justice Douglas, Screws v. United States, 325 U.S. 91 (1945).

[122] Pritchett, THE ROOSEVELT COURT, 1958. p. 49.

[123] Department of Justice, release of Feb. 15, 1960. Letter from Lawrence E. Walsh, Deputy Attorney General, to Senator James O. Eastland, Chairman, Committee on the Judiciary.

[124] S. 1196, 68th Cong., 1st Sess., 1923.

prosecutive machinery.[125]

A study of the deficiencies in Section 242 was made in the Civil Rights Section as part of the preparatory work in drafting a proposed new civil rights act in 1956.

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[125]Prior to the Screws case general civil rights bills, in addition to S. 1196 supra were introduced, many of them aimed at punishment, federally, for lynching. A brief delineation is as follows: 75th Cong., 1st Sess., 1937 (H.R. 2889 - "deprivation of Constitutional Rights), 76th Cong., 1st Sess., 1939 (H.J.RES. 300 - "protection against action by a state"); 80th Cong., 1st Sess., (H.R. 4472 - "increase in penalties for conviction for violation of civil rights under color of State or local law"); 81st Cong., (H.R. 368 - a similar proposal). In the 81st Congress Senator McGrath introduced a bill (S. 1725) to implement the recommendations of President Truman (94 Cong. Rec. 927-29) which resulted from the proposals contained in the Committee on Civil Rights. See analysis of this and other bills by Atty. Gen. Clark, in Hearings before Committee on Judiciary on Anti-lynching and Protection of Civil Rights Bills, 81st Congress, 1st and 2d Sessions (1949-1950), Washington, 1950:

"There has been criticism that the penalty of a fine not more than $1000 or imprisonment of not more than 1 year, or both, is too light in the serious cases. On the other hand, the increase of the prison term would change the nature of the offense from a misdemeanor to a felony, with a loss of the facility the Government now enjoys in being able to prosecute by information rather than by the more cumbersome method of proceeding by indictment . . . Accordingly, it is deemed preferable to leave the general punishment at the misdemeanor level, but in cases where the wrong results in death or maiming, to provide for the greater penalty ... ."

Reprinted in 1955 House hearings, pp. 157-79, and in 1957 House hearings, pp. 325-347. Bills were introduced in the 82d Congress (S. 1737) (proposal to strengthen criminal provisions for the violation, under color of State law, of civil rights); 83rd Congress (S. 468 and H.R. 3885). In the 84th Congress more than 25 civil rights bills were introduced, S. 905 and H.R. 3566 providing for increased penalties. In the 85th Congress more than 90 bills were introduced, including increased penalties under the statute. S. 508, introduced by Senator Humphrey and others, proposed to amend and supplement existing civil rights statutes; specifically in this context S. 508 would increase penalties "if the deprivation, different punishment or other wrongful conduct . . . shall cause the death or maiming of the person injured or wronged". S. 508 was not supported by the Administration (Hearings, Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States

Attorneys in the Section drafted amendments[126] to the existing statute. These would have augmented the protective coverage of rights and changed Section 242 from a misdemeanor to a felony by increasing the penalties for violating the statute where "such wrongful conduct resulted in the maiming or death of the person";[127] in such violation the penalty "shall be a fine of not more than $10,000 or imprisonment for not more than twenty years, or both".[128]

A new section - 245 - would enumerate specific rights, privileges and immunities to include the following:[129]

1. The right to vote as protected by the Constitution and federal laws:
2. The right to petition the Federal Government for redress of grievances;
3. The right to inform the Federal Government of a violation of federal law.
4. The right to the free exercise of the rights, privileges and immunities of United States citizenship.
5. The right to be immune from exactions of fines or deprivations of property without due process of law;
6. The right to be immune from punishment for crime or alleged criminal offenses except after a fair trial and upon conviction and sentence pursuant to due process of law;
7. The right to be immune from physical violence or mental torture applied to exact testimony, to compel confession of crime or alleged offenses, or to extort any information;
8. The right to be free of illegal restraint of the person;
9. The right to protection of person and property without discrimination by reason of race, color, religion, or national origin;

Senate, 85th Cong., 1st Sess., 1957, p. 140.) S. 510, an omnibus human rights bill, to "secure, protect and strengthen the civil rights accruing to individuals under the Constitution and laws of the United States", also introduced by Senator Humphrey and others was not voted out of committee.

[126]Draft drawn by Civil Rights Section, Department of Justice, March 2, 1956, entitled A Bill to Amend Chapter 13 of Title 18, United States Code, relating to Civil Rights, and to otherwise strengthen the Civil Rights Statutes. Copy obtained from the Department of Justice, Washington.

[127]Ibid., p. 2.

[128]Ibid.

[129]Ibid., pp. 2,3. Some of the rights would be protected only under Section 241; those being applicable only to citizens.

10. The right not to be subjected to illegal summary punishment;

11. The right not to be indicted by a grand jury from which prospective jurors were systematically excluded because of race . . ., and the right to be tried by a petit jury from which prospective jurors have not been excluded because of race, . . .

14. The right not to be deprived by the willful action or inaction of any person, of any other right which is made or which shall have been made specific by the Constitution, by the laws of the United States, or by decisions of the courts interpreting such Constitution or laws.

It was decided within the Department of Justice not to present the proposed Section 242, and 245 to Congress for consideration. The view of some attorneys in the Department was that it would not provide an adequate solution to the problem.[130] The considerations in this decision were both legal and political. Such a statute would have gone beyond the proposals introduced by members of Congress at a time when the Administration was bending its major effort in civil rights to obtain congressional approval of a right to vote law. On the legal side, the Department felt that it would be an almost impossible task to draft a law precise enough in terms to meet the requirements of a criminal statute and yet broad enough in its application to cover different ways or means that could be used to deprive an individual of his rights under the Fourteenth Amendment. An assault may be committed with a number of "intents" in mind, all of them constituting federal as well as state offenses. The attack may be committed with a view of prohibiting an individual from voting, or to extract a confession, or to punish summarily through depriving him of the right to be tried for alleged past misconduct. To cover all the different means or methods that could be used to accomplish the deprivation of a "right" would probably appall the Senate Judiciary Committee. In the midst of the other civil rights issues in the courts it would have become a situation impossible for the Civil Rights Division to handle. Attorney General Brownell decided, that although the present statute has defects, amending it "would be so extraordinarily complicated"[131] and "was not necessary" at

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[130]Information obtained in interviews with the draftsmen of the proposed statute.

[131]Department of Justice. Statement by the Attorney General on Civil Rights legislation before the Senate Committee on the Judiciary, May 16, 1956. Release, Department of Justice.

the time. To codify every federally protected right, in addition to its impracticability, would make the statute rigidly confining, and would arouse and deepen further the fears of the states concerning a misuse of federal power, particularly if prosecutions under such a new statute were to markedly increase.

To remove the difficulties imposed by the Screws requirement on "willfulness" the provisions inserted in congressional bills have been similar to those proposed by the Civil Rights Section, enumerated above. The most recent bill to amend Section 242 was introduced by Senator Humphrey and others in the last session of Congress.[132] In addition to providing for increased penalties where death or maiming result, Section 242-A enumerates certain "rights, privileges, and immunities" of inhabitants, including, but not limited to, a number listed in the Civil Rights Section proposed statute. Senator Humphrey's bill is similar in almost all respects to those introduced in the Senate and House of Representatives since the Senator McGrath (S.1725) bill in the 81st Congress. Its coverage is included in numbers 1,5,6, 7,8, and 9 of the Civil Rights Section Bill, with an additional provision that:[133]

> "If any provision of this title or the application thereof . . . is held invalid, the validity of the remainder . . . shall not be affected thereby."

This bill was not acted on by the Judiciary Committee:[134]

> ". . . members of the Committee who are unsympathetic to civil rights legislation have balked any and all attempts to get any civil rights bills out of the Committee and reported to the Senate . . . we simply do not have the votes to put through a strong civil rights measure this year."

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[132] S.2003, 86th Cong., 1st Sess., 1959.

[133] Ibid., p. 4.

[134] Letter from John J. Flynn, Legislative Counsel to Senator Hubert H. Humphrey, March 31, 1960. Whether the letter from Deputy Attorney General Walsh to Senator Eastland, noted above at footnote 123 is intended to be anything more than a polite suggestion to the chairman of the Committee on the Judiciary, it represents for the first time constructive recognition of the need to strengthen Section 242. Also, Attorney General Rogers' statement that he was "considering a new criminal statute that would let the Federal Government move in more strongly when states refused to act in racial crimes" represents a new approach for the Eisenhower Administration, which has consistently opposed increasing criminal penalties in Section 242. See The New York Times, November 18, 1959.

Such bills as the two outlined above would help make the statute more meaningful in terms of rights protected and seriousness of the violations. They would remedy the "vagueness" criticism voiced by the minority opinions in Screws, Crews, Williams, and Koehler. "Deprivation of rights, privileges and immunities" would have clear specificity. The statute would provide for procedures applicable to a felony charge which would erase that flexibility and prosecution by information which have been considered two of the saving graces of the Screws requirement. This latter, with the exception of Catlette, has been of little value, since its use has been so rare. Making the offense a felony may make it more difficult to indict and convict but it would add greatly to the potential hazard faced by a violator and would very well prove a greater deterrent than the present misdemeanor statute. Some attorneys in the Division think the felony aspect, as a deterrence, and punishment, is over simplified. It is their view that indictment and conviction, even under a misdemeanor are the more important considerations. However, where maiming and/or death result, it is an anachronism to think of a civil right criminal statute in terms of a misdemeanor.

A Supreme Court decision upholding "constructive intent" would greatly strengthen Section 242. In addition, proposals in Congress to add civil remedies for Section 242 inflicted injuries would perhaps be exposed to less hardship in the House and Senate Judiciary committees than have the criminal penalties.[135]

Section 242 could be made applicable for preventive relief as proposed in S.508.[136] Section 4 of that bill included the following:

> "A. Any person who deprives an inhabitant of any State of any right, . . . shall be liable . . . for

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[135] Statement of Clarence Mitchell, Director, Washington Bureau, NAACP, Aug. 8, 1960. Former Attorney General Brownell favors this approach, as do many legal commentators.

[136] See S.508 hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, 85th Cong., 1st Sess., 1957. p. 141. Clarence Mitchell, Director, Washington Bureau, NAACP, expressed "more faith in the efficability of the civil procedure as a preventive measure." Interview, Aug. 8, 1960. Attorney General Brownell favored the civil remedy process, ". . . we have had a period of experience with these civil remedies, we might be back again . . . seeking amendments to the criminal statutes which would cover specifically any area which our experience shows can be satisfactorily dealt with only by criminal prosecution." United States Senate, 85th Cong., 1st Sess., 1957, at p. 21.

damages sustained . . . and for injuries, including deaths . . .

B. Upon a showing that an inhabitant . . . is being deprived or is threatened to be deprived of any right, privilege, or immunity secured or protected by the Constitution, such inhabitant, or the Attorney General of the United States, in the name of the United States but for the benefit of such inhabitant, may commence . . . an action for preventive, mandatory, or declaratory relief to prohibit or prevent such deprivation or such threatened deprivation."

S.2001[137] introduced in the 86th Congress, in addition to Section 4A above has the following provisions:

"B. The rights, privileges, and immunities secured or protected . . . referred to in (A) include . . . (those) protected under Title 18 of the United States Code and all other criminal laws of the United States. In any action brought under Subsection A based upon an alleged violation , . . it shall not be necessary to the commencement . . . of such action that any person against whom such action is brought has been convicted of violating such provision."

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[137] 86th Cong., 1st Sess. This is the bill introduced by Senator Humphreys and others. It was not reported out of Committee.

Harry H. Shapiro

LIMITATIONS...IN PROSECUTING CIVIL RIGHTS VIOLATIONS

CONCLUSION

Prosecution under Section 242 is "a delicate and difficult task." When a state fails or refuses to fulfill its responsibilities for the protection of civil rights the intervention of the federal government is required to vindicate these rights. Screws has placed a burden upon the Civil Rights Division which, added to its self-imposed functional limitations in this area, has made successful prosecution a continuing problem. If the prospects for future prosecution continue to suffer from these cautionary inhibitions, the Civil Rights Division will have lost the opportunity to realize the goals for which it was established. Justice Murphy evidenced prescience when, in his dissenting opinion in Screws, he wrote of this necessary intervention as "futile if courts disregard reality".

The opaque nature of the Screws decision, with its attendant effects upon subsequent prosecutions, is neither impressive nor reassuring in upholding civil rights. A more sharply drawn federal statute, particularizing the rights protected and providing meaningful penalties in terms of the rights violated, would add significantly to the prosecutive tool. What was considered by the minority in Screws to be a "shapeless and all embracing statute" would then become specific and clarified. Despite the fears of a few, the statute has not become a "dangerous instrument of political intimidation and coercion", except to those averse to federal intervention on any terms other than their own. More concern should be given to the "debilitation of local responsibility" of which civil rights violations are but a single, albeit, dangerous manifestation.

Testing the concept of "constructive intent" in the courts would enable the Division to overcome the difficulty imposed by the Screws requirement as seen in Minnick. This would require a liberalization of the court's charge which would serve to clarify permissible behavior of police officers under the statute. It would then interrelate "bad purpose" to "constitutional deprivation".

The "pervasive gap", separating democratic aims from practices in the administration of justice under the statute, cannot be closed by Section 242 as presently interpreted. The Civil Rights Division requires and merits the sharpest tool with which to fulfill its role as protector of these fundamental rights. This necessitates a criminal civil rights statute that will, when applied, serve as evidence of a national will to protect all persons against state and local authorities whose views of civil rights are a continuing source of danger to the realization of democratic ideals. It is the responsibility of Congress to take action in this direction.

APPENDIX I

JURISDICTION OF THE CIVIL RIGHTS DIVISION[1]

Department of Justice, Washington, December 10, 1957

Civil Rights
18 U.S.C. 241 (Conspiracy to injure citizens in the
242 exercise of their civil rights; depriving persons of civil rights)
243 (Exclusion of jurors on account of race or color)
244 (Discrimination against person wearing uniform of armed forces)

Sentence, Judgment and Execution
18 U.S.C. 3566 (Execution of death sentence)
3567 (Death sentence may prescribe dissection)
3568 (Effective date of sentence)

Hatch Act & Corrupt Practices Act
18 U.S.C. Ch. 29 (Elections & Political activities)

Escape and Rescue
18 U.S.C. 751 (Prisoners in custody of institution or officer)
752 (Instigating or assisting escape)
753 (Rescue to prevent execution)
754 (Rescue of body of executed offender)
755 (Officer permitting escape)
1072 (Concealing escaped prisoner)
42 U.S.C. 261 (Penalties for introduction of narcotics into hospitals, escaping from, or aiding and abetting escape from hospitals, etc.)

Fugitive Felon Act
18 U.S.C. 1073

Merchant Seamen
18 U.S.C. 2191-2193, 2195 (Maltreatment of crew; mutiny, abandonment in foreign port, etc.)
2196 (Drunkenness or neglect of duty)
46 U.S.C. 542a, 545-568, 570-571, 575, 643, 652-653, 658, 660, 662, 667, 672, 701

Obstruction of Justice
18 U.S.C. 1503

Peonage and Slavery
18 U.S.C. 1581-1588

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[1]Memorandum, Asst. Atty. Gen., Civil Rights Division, Dept. of Justice, Washington, Dec. 10, 1957.

APPENDIX I (Continued)

Prisons and Prisoners (Legal Matters)
18 U.S.C. 1791 (Traffic in contraband articles)
1792 (Mutiny, riot, dangerous instrumentalities prohibited)
3569 (Discharge of indigent prisoner)
3651, 3653 (Suspension of sentence and probation)
4082 (Commitment to Attorney General, transfer)
4083 (Penitentiary imprisonment; consent)
4161-4166 (Good time allowances)
4201-4207 (Parole)
4241-4248 (Mental defectives)
5005-5026 (Youth Corrections Act)
5031-5037 (Juvenile Delinquency)
Indigent Convicts

Search Warrants
18 U.S.C. 2234 (Authority exceeded in executing warrant)
2235 (Search warrant procured maliciously)
2236 (Searches without warrant)

Shanghaiing Sailors
18 U.S.C. 2194

Civil Rights Act (enacted 1960),[2] P.L. 86-449.

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[2]Not in Memorandum of note 1, supra.

APPENDIX II

STATISTICAL DATA UNDER 18 U.S.C. 242, FEBRUARY 10, 1960

	Complaints Received	Complaints Investigated	Cases Submitted to Grand Jury	No True Bills	Indictments Returned
Jan. - June, 1958	584	317	2		2
July - Dec., 1958	643	167	12	9	3
Jan. - June, 1959	612	213	9	5	17*
July - Dec., 1959	591	211	4	1	25**

Disposition of Cases in Court

	Acquittals	Convictions	Dismissals
Jan. - June, 1958	1	1	1
July - Dec., 1958	3		
Jan. - June, 1959		2	1
July - Dec., 1959	1	1	1

* 14 of these indictments were returned in a single grand jury investigation.

** 23 of these indictments were returned in a single grand jury investigation.

APPENDIX III

Defendants convicted after trial or on plea and sentenced for violations of U. S. Code Title 18 Section 242 and *Title 18 Section 371 (conspiracy) Civil rights in all U. S. District Courts during fiscal years 1954 through 1959.

Administrative Office U. S. Courts
Washington, D. C., March 1960

District and Fiscal Year	Docket Number	Sentence Imposed by The U. S. District Court
1954		
Alabama, N.	1363	Fine $275
Mississippi, S.	2295	12 months and fine $500, suspended, probation 15 months
Florida, N.	999	1 year and fine $500, imprisonment suspended, probation 1 year
Texas, N.	9348	6 months, $500 fine
Texas, S.	5754	Fine $100
Kentucky, E.	9951	Fine $1,000
1955		
Alabama, N.	1338	Fine $250 to stand committed as of July 15, 1955 and 6 months, suspended
Texas, E.	5096	Fine $500 to stand committed in default of payment
1956		
Texas, W.	488	4 months - suspended 4 months - probation without supervision
Missouri, E.	28285	Fine $100 each counts 1 and 2, to stand committed
Idaho	2998	Fine $150 and 30 days each of counts 1 and 2. Imprisonment suspended and defendant to have 6 months to pay fines.

APPENDIX III (Continued)

District and Fiscal Year	Docket Number	Sentence Imposed by The U. S. District Court
1957		
New York, W.	7022	Counts 1 and 2, 6 months suspended, 1 year probation, conc. Fine $200 count 1
North Dakota	8499	Count 2, 6 months imprisonment
1958		
Alabama, M.	10981	Fine $500
Texas, S.	13235	6 months suspended, 5 years probation
Arkansas, E.	3886	Probation 1 year, fine $500
Nevada	136	Counts 1 and 2, 1 year conc, 6 months
1959		
Georgia, N.	4767	Count 1 *(18:371), 12 months and fine $1,000. Imprisonment and fine suspended, 3 years probation. Count 2 (18:242), jury not guilty
Georgia, M.	2188	6 months suspended, 5 years probation, fine $1,000
Illinois, E.	18850	Probation 2 years, fine $250

*Title 18 Section 371 (conspiracy) referred to in the heading, and fiscal year 1959, applies only to Georgia, N., docket number 4767.

LIMITATIONS OF THE FEDERAL CRIMINAL STATUTE, 18 U.S.C. 242, IN PROSECUTING CIVIL RIGHTS VIOLATIONS*

Harry H. Shapiro
Rutgers University

Errata

page 1, * should read "This paper represents a summary..."
page 34, first paragraph, tenth line should read
"...rights of the victim...were..."
page 51, footnote 112, should read
"The subcommittee has not yet acted on the appointment as of August1, 1960."

Addendum

APPENDIX II add footnote 1 "Prepared by Civil Rights Division, Department of Justice, Washington."

THE JOINT COMMITTEE CN ATOMIC ENERGY: CONGRESSIONAL 'WATCHDOG' OF THE ATOM?

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel September 8-10, 1960

Writing in The New York Times Magazine in 1955, Dorothy Fosdick concluded an article about the Joint Committee on Atomic Energy with the observation, "we can all be grateful that in the complicated and fateful world of the atom, the American people have had so rational and faithful a watchdog of their interests."[1]

This evaluation of the Joint Committee is typical of the almost unanimous praise which characterized popular appraisal of JCAE operations during the first ten years of the Committee's life, when the Committee almost always appeared, without blemish, as the answer of representative democracy to the problem of popular control of atomic energy. Former AEC Commissioner Eugene Zuckert, for example, hailed the "activist" role of the Committee, claiming that its vigorous advocacy of specific atomic programs was clearly vindicated by the special nature of atomic energy and its problems.[2] JCAE member Senator Henry M. Jackson lauded the Committee's distinguished record of bipartisan cooperation, commenting that "in the Joint Committee, the aisle has become of less and less significance."[3] And Professor Morgan Thomas, in his major study on Atomic Energy and Congress, emphasized the achievements of the JCAE in an area "hidden by a thick curtain of secrecy," concluding that "the structural device of a strong JCAE-AEC combination provided a good means for enabling democratic government to survive the unusual stresses arising from the needs of atomic energy control."[4]

During more recent years, however, increasing doubt has been expressed over the propriety of some of the Joint Committee's activities, and it is interesting to note that this criticism has been forthcoming from members of the legal profession, rather than from the political scientists. With the exception of the Morgan Thomas study, the political scientists have shown considerable reluctance to make any critical evaluation of this unique legislative group, despite the fact that many of those most familiar with the Committee's operations have long urged that "it merits the closest possible examination by students of political science."[5]

If the Committee has merited such analysis in the past, this is even more true today when suggestions are again being made, urging Congress to reconsider the advisability of establishing new joint committee machinery to monitor the operations of the Central Intelligence Agency.[6] Hence, after briefly tracing the general background of the Congressional joint committee device, this paper will concentrate on a more specific appraisal of the JCAE, itself, in an effort to evaluate what appear to be some of the more negative aspects of the Committee's performance in its role as the Congressional 'watchdog' of the atom.

I - BACKGROUND: THE JOINT COMMITTEE DEVICE

During its most recent legislative session, Congress utilized the services of twelve joint committees involving a total of 122 members drawn from the two houses.[7] As is indicated in Appendix I, ten of these were standing, and two were select, committees. This figure is somewhat misleading, however, because only two of the twelve groups - the Joint Economic Committee and the Joint Committee on Atomic Energy - were really active at the committee level. "The other groups were either inactive or functioned only at the staff level."[8]

The twelve committees varied widely in size and age, but it is interesting to note that most of them appear to have enjoyed distinguished leadership, in terms of seniority and Congressional influence. Among those serving either as chairman or vice chairman of joint committees in the 86th Congress were Representatives Cannon, Durham, Mills and Patman and Senators Anderson, Byrd (Va.), Douglas, Green and Hayden.

Congress has utilized the services of joint committees for conference purposes and routine legislative business from its very first session. For example, the three oldest standing joint committees still in existance - those on the Library (1843), Printing (1846), and the Disposition of Executive Papers (1889), more popularly known as the "waste basket" committee - were created to take care of specific 'housekeeping' duties. From time to time, however, ad hoc groups were established during the early history of Congress to consider broad areas of national policy, the most notable being the joint committee utilized by Henry Clay in 1821 to consummate the Missouri Compromise.

It was not until the Civil War that Congressional joint committees were employed for purposes of investigation and control. An outstanding example was the joint inquiry into the conduct of the war, under the chairmanship of Senator Wade, whose investigative reports from 1862 to 1865 filled eight volumes. Following the war, Congress utilized the services of joint committees to investigate emancipation and reconstruction, and these investigations continued for the next fourteen years "because of the long political accord of the two houses ..... coupled with their united opposition to the policy of the Executive toward the Southern states."[9]

During the early part of the present century Congress continued to establish joint committees for specific investigative purposes, examples being the joint inquiries into the Ballinger-Pinchot dispute (1910), short-term rural credits (1920), internal revenue taxation (1926), veterans' benefits (1932), and governmental organization (1937). All of these groups, with the exception of the Joint Committee on Internal Revenue Taxation, were eventually terminated, however, and it was not until World War II that we see the advent of the standing joint committee of more permanent duration.

The first proposal came in 1940 to establish a Joint Committee on National Defense, primarily to oversee the President's expenditure of a $100,000,000 war emergency fund voted by Congress, but this was defeated largely due to the urgings of Senator Tom Connally who argued, quite vigorously, that it would be improper to "hamper, embarrass, and impede (the President)....with a smelling committee."[10]

David E. Lilienthal, at the time vice chairman of TVA and later the first AEC chairman, enjoyed no more success the following year when he advocated the use of annual hearings before joint Congressional committees by all governmental corporations engaged in business enterprises as "a powerful stimulus....to the carrying out of the social objectives that brought the agency into being."[11]

This same year (1941), however, Congress did establish the standing Joint Committee on Reduction in Nonessential Federal Expenditures which is still in existence today, and following the war in 1946, Congress established both the Joint Economic Committee and the Joint Committee on Atomic Energy as a part of the Full Employment and Atomic Energy Acts of that year. Three additional standing Joint Committees on Hopi Indian Administration, Defense Production, and Immigration and Nationality Policy were established between 1950 and 1952, and a variety of temporary joint committees on labor-management relations (1947-49), foreign economic cooperation (1948-50), and railroad retirement legislation (1951) were also established after the war to handle specific policy problems. No permanent standing committees have been created since 1952, but in 1956, Congress did seriously consider the advisability of setting up a Joint Committee on Central Intelligence which, according to William S. White, was defeated in the Senate due to the unique alchemy of the "inner club", or, according to Harry Howe Ransom, was defeated because the Senate became convinced that existing surveillance of CIA by the Armed Services and Appropriations Committees was adequate.[12]

A variety of arguments have been utilized to justify the joint committee device: it economizes on time by avoiding repetitive testimony and minimizing the use of conference committees; it enables Congress to enjoy the economy and advantages of a joint staff; it promotes intercameral cooperation, coordination, and mediation; it is an effective way to investigate specific areas of political controversy, or to make temporary studies in depth as a prelude to specific legislative action in difficult areas of national policy. There is no doubt, however, that one of the most persuasive arguments which has been utilized to justify this device in more recent years is that the joint committee enables Congress to 'keep up' with the executive branch in technically complex and highly sensitive or secret areas of administrative operations. When utilized with this aim in mind, the joint committee represents the latest in a long line of Congressional devices, such as the legislative veto,[13] which are designed to provide 'control' mechanisms over the executive branch when it is granted broad discretionary authority to grapple with the problems of an increasingly complex and confusing world. As Sidney Hyman has noted, if Congress has declined in influence since the turn of the century, one of the major reasons is to be found in the fact that "expert opinion....is either unavailable....or unintelligible to it."[14] One of the primary aims of Congress in establishing the Joint Committee on Atomic Energy was to remedy this deficiency, insofar as possible, with regard to the "fateful world of the atom."

II - THE JOINT COMMITTEE ON ATOMIC ENERGY

During its operations to date, the Joint Committee on Atomic Energy has made a number of significant contributions to the nation's atomic energy program, ranging from its so-called "reassurance" function (i.e. "the public has had less uneasiness about atomic energy because of the existence and operation of the committee")[15] to its defense of

specific AEC programs against haphazard and questionably motivated Congressional budget slashes. In more recent years, however, a number of questionable JCAE practices have become apparent and it is the aim of this paper to concentrate upon these latter developments, rather than upon an evaluation of the overall JCAE operation, on the grounds that they have become of enough importance to warrant detailed consideration by thoughtful students of the political process.

For purposes of clarity, three potential problem areas are singled out for individual consideration: first, the problem of confusion over the extent of the Committee's area of functional authority; second, the problem of diffusion of programmatic and policy responsibilities between the Committee and the Atomic Energy Commission; and third, the problem of abdication of Congress-wide responsibility for atomic energy policy.

(1) Confusion over Committee Authority

In setting forth the "membership, authority and duty" of the Joint Committee, Sections 201 and 202 of the Atomic Energy Act of 1954 provided as follows:

> Sec. 201. Membership - There is hereby established a Joint Committee on Atomic Energy to be composed of nine members of the Senate to be appointed by the President of the Senate, and nine Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. In each instance not more than five members shall be members of the same political party.
>
> Sec. 202. Authority and Duty. - The Joint Committee shall make continuing studies of the activities of the Atomic Energy Commission and of problems relating to the development, use, and control of atomic energy. During the first sixty days of each session of the Congress, the Joint Committee shall conduct hearings in either open or executive session for the purpose of receiving information concerning the development, growth, and state of the atomic energy industry. The Commission shall keep the Joint Committee fully and currently informed with respect to all of the Commission's activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of Atomic energy. Any government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy. All bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the Commission or to the development, use or control of atomic energy shall be referred to the Joint Committee. The members of the Joint Committee who are Members of the Senate shall from time to time report to the Senate, and the Members of the Joint Committee who are Members of the House of Representatives shall from time to time report to the House, by bill or otherwise, their recommendations with respect to matters within the jurisdiction of their respective Houses which are referred to the Joint Committee or otherwise within the jurisdiction of the Joint Committee.[16]

In keeping with Section 201, the Committee consists of eighteen Senators and Representatives who have divided their work under eight subcommittees as outlined in Appendix II. In addition, the Committee was given specific procedural powers in the 1954 Act to hold hearings, conduct investigations, and issue subpoenas (Sect.204); to appoint a staff and utilize consultants (Sect.205); to classify information (Sect.206); and to exercise a "deliberative" legislative veto with respect to the determination of new special nuclear material (Sect.51), the determination of new source material (Sect.61); and the entering into of agreements for cooperation with foreign nations (Section 123) and contracts for electric utility services (Section 164).

Under Section 261 of the 1954 legislation, the Joint Committee also gained an important power previously denied it by the original 1946 McMahon Act; the power to authorize appropriations for plant construction and real property acquisition. This new authorization power was further strengthened by 1957 amendments to Sect. 261 which provided for specific JCAE authorization for all cooperative arrangements for demonstration reactors and for civilian "experimental" power projects (which up to that time the Commission had been placing in its operating, rather than construction, budget.) Other 1957 amendments required the Commission to lay before the Joint Committee new plutonium prices and any proposed waivers of fuel or other charges.

At first glance, the Committee's mandate - exclusive of the more recent authorization powers - may appear to be somewhat limited. "The mere right to know, without more specific legal authority to supervise and direct, seems to be a frail foundation for committee authority." Yet, from the very beginning, the requirement that the JCAE be kept "fully and currently informed" with respect to all AEC activities has conferred "immense powers of moral suasion upon the Committee. There, in the most literal sense knowledge is power."[17] Actually, when the above legislative provisions are lumped together, they form the basis for a wide variety of committee functions which have recently been classified under four major headings - legislative, investigative, informational, and policy-making - by JCAE Chairman Clinton P. Anderson and Executive Director James T. Ramey.[18]

There has been little confusion with respect to the Committee's discharge of the first two functions - legislation and investigation. From the very beginning, the Committee has served as the legislative repository for the referral of all bills relating to atomic energy and the Committee has also long exercised its investigative powers, the first major example being the so-called Hickenlooper "incredible mismanagement" hearings in 1949. It is in the latter two areas - information and policy-making - that serious question has arisen as to just how far the Committee is authorized to proceed, and much of the confusion here has stemmed from the fact that the Committee regards itself as being a singularly unique legislative device, quite unlike the other committees of Congress. As Messrs. Anderson and Ramey have implied, "Congress did not break precedent in establishing the Joint Committee in Nuclear Energy as such... It did break precedent in... requiring the AEC and other executive agencies to keep the Joint Committee fully and currently informed."[19]

Amplifying these remarks in a statement before Congress, Senator Anderson has explained, "it should be remembered that the Joint Committee on Atomic Energy is on a different basis with the executive departments than any other committee. I read from a statement of our attorney: 'The Joint Committee is not a standing committee of either House, but it is a

committee which was established by the Atomic Energy Act of 1946 and which has been continued under the Atomic Energy Act of 1954... As a statutory committee the powers of the Committee follow from the statute establishing the committee.'"[20] In a similar vein, Senator Hickenlooper has asserted, "the Committee is not set up as a standing committee of the Senate or of the House. It is not a standing committee of either House. It is a Committee created by the National Legislature of Congress. It is a Committee created and established by law, with its rights defined by law... the Committee has unique power."[21]

Via the assertion of this "unique power" doctrine, the Joint Committee has been able to extend its influence over a wide variety of executive agencies. Indeed, according to one close student of atomic affairs, former AEC attorney Harold P. Green, the Committee "has been able to exercise authority and responsibility in the areas within the purview of the State Department, the Department of Defense, the Joint Chiefs of Staff, the Central Intelligence Agency and the Federal Civil Defense Administration,"[22] in addition to the AEC, itself.

The specific mechanism which the committee has utilized for this purpose is the provision in Section 205 of the Atomic Energy Act of 1954 that "the Joint Committee is authorized to utilize the services, information, facilities and personnel of all departments and establishments of the Government," and the provision in the Sect. 202 which specifies that "any government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy."[23]

Certainly an objective reading of this latter provision makes it clear that the JCAE is limited in its informational authority to areas relating to atomic energy, yet a special opinion prepared for the Committee by its legal counsel in 1955 recognizes no such limitation at all when it asserts quite flatly and without qualification that "this section (i.e. Sect. 202) amplifies the right of the committee to request <u>any information it desires</u> from any governmental agency"[24] (underlining added). In a similar vein, this legal opinion holds that there is absolutely no information which the executive branch may hold back from the JCAE on the grounds that in the area of atomic energy the concept of executive privilege has been waived completely by the President. To quote further:

> "When the President signed P.L. 703 on August 30, 1954, he accepted the terms of the Atomic Energy Act of 1954 on behalf of the executive branch of the Government. By so doing he accepted the terms incorporated within Section 202, which required the AEC, the DOD, or any Government agency to furnish any information required by this committee.... If the President thought that this bill interfered unduly within his power he would have vetoed it. But he did not veto this bill, he accepted it. Therefore he waived any right he might be able to claim in his discretionary ability in withholding information from this committee, and he waived it on behalf of all departments and agencies of the executive branch."[25]

Under the mantle of this dubious legal interpretation, the Joint Committee has indicated that there is no practical limitation - other

than its own sense of propriety - as to how far it may go in eliciting information from the executive branch of the Government, or in directing the executive branch to bend to its will. To again quote Senator Hickenlooper, "under a strict interpretation of the law which established the AEC, while I doubt if we would have occasion to go this far, yet if we should say to the Attorney General, 'Detail X number of people on the staff of the FBI and have this matter investigated', I think under the law he would have to do it."[26]

If the Committee might not have occasion to go this far, in directing the FBI, it has displayed no such hesitation with respect to its own special executive fief - The Atomic Energy Commission. In order to understand why this is so it is first necessary to look at the historical evolution of the Committee and then discuss what the Committee has come to consider as its particular role in the fourth functional area mentioned by Anderson and Ramey - that of atomic policy formulation.

Historical precedents shape the character of any new political structure and the Joint Committee on Atomic Energy has been no exception. From all indications, during its first two years, the Committee publicly displayed little initiative in the area of policy formulation. Actually, it appears to have gone to considerable pains to avoid any active participation in the policy area at all, to the point where Morgan Thomas was prompted to question whether the Committee was not remiss in its duties for failing "to accept any broad responsibility for the Commission's program."[27]

All this changed, quite suddenly and dramatically, in the fall of 1949. The catalyst was President Truman's announcement of the Soviet Union's successful detonation of an atomic bomb. The issue under consideration was what action the United States should take to counteract this startling and unexpected loss of an impregnable atomic "monopoly". The Joint Committee, which had previously indicated some latent interest in a hydrogen bomb developmental program, now lost no time in advocating an all-out crash effort in this area. The majority of the AEC Commissioners and the AEC General Advisory Committee members questioned the wisdom of, and the necessity for, such a move. The rest is history; the Committee's will prevailed and a successful thermonuclear device was exploded by the United States only shortly before the Soviet Union achieved a similar success in detonating its own hydrogen bomb.

In retrospect it is not apparent that this sequence of events - and most especially the fact that the Committee forced a reluctant executive to stay ahead of the USSR in this most vital area of national security - marked a turning point with respect to JCAE stewardship of the atomic energy program. The extent of the change can be seen in a 1953 article by JCAE member Jackson when he explained, "in truth, the Committee and the Commission jointly run the atomic energy program... And in the case of certain vital policy decisions, the urging of the JCAE has played so powerful a role that it can be said the Committee made the decision with the advice and consent of the executive branch.... More often than not, the Committee finds itself saying to the executive branch not 'Do less; do it more cautiously', but, 'Do more; do it more boldly.' And for every time the members ask 'Isn't this program too ambitious?', they find themselves asking a dozen times, 'Isn't this program too cautious?'."

Spurred on by additional developments where the verdict of subsequent events proved the Committee's position to be sound, (another notable example being the JCAE's vigorous advocacy of an expanded raw materials

exploration and development program in 1950-52), the Joint Committee began to solidify a concept of its own "adventurous spirit," to use the phrase of Committee member Melvin C. Price. Hence, we see the gradual evolution of a doctrine of the far-seeing and vigorous legislative committee pushing a reluctant executive agency into new programmatic endeavors. By 1956, the Committee had reached a point where it noted that one of its major functions was "to bring a measure of perspective to the atomic energy program", and cited as Exhibit A in this regard was the fact that "because of this perspective...the Joint Committee was able to sponsor the development of the hydrogen bomb over the strong opposition of many in the atomic energy program."[29] Thus, it is no surprise to see Senator Anderson and Executive Director Ramey cite the fourth area of Committee responsibility - that of policy-making - as "possibly the most unique function of the Joint Committee", and to take pride in the fact that while this function "is explicitly recognized in Section 202 (of the Atomic Energy Act of 1954) in relation to Congress itself...it remained for the Committee to apply this concept to the Executive Branch."![30]

In this manner the wheel has come full circle over the years. From an initial reluctance to play any major role in the area of policy formulation, the Joint Committee eventually came to adopt a vigorous standard of legislative direction over the AEC's activities. Yet, in the process, we have come to see a blurring of responsibility between the executive and legislative branches which is exceptional in its variety and detail of application. As one Joint Committee member has noted, "as long as one speaks in the traditional language of Constitutional law - with its black and white divisions between co-ordinate and coequal branches of government - it is difficult to define the Joint Committee's precise role in atomic policy making."[31] Such has certainly been the story of the more recent relationship between the Joint Committee and the Atomic Energy Commission.

(2) Diffusion of Policy and Programmatic Responsibility

While the Joint Committee has monitored the Commission's actions with increasing scrutiny since the hydrogen bomb controversy of 1950, it was not until the years 1955-56 that the Committee's attitude began to harden into one of rigid suspicion and mistrust. The major area of controversy between the two groups has been that of atomic power development, and again, it was a specific external explosion that served as the catalyst. Whereas, the Russians had detonated their atomic bomb in 1949, the Bureau of the Budget fired one of its own in 1953-54 when it directed the Atomic Energy Commission to enter into the now famous Dixon-Yates contract.

Under the original Dixon-Yates proposal, which was subsequently abandoned by the Administration, the AEC was to negotiate with two private utility holding companies - Middle South and Southern - to supply power to the Tennessee Valley Authority and thus compensate TVA for some 600,000 kilowatts which the Commission was to use in its Paducah installation. In order to supply such power, an around-about arrangement was devised under which the private utilities were to build a new generating plant in West Memphis, Arkansas. At first, the controversy centered over the question of whether TVA, or the private utilities, should build a plant to serve TVA's needs. The issue subsequently became even more confused, however, when charges of conflict-of-interest were raised against one of the private utilities' spokesmen, and Congress became increasingly frustrated when it was unable to obtain any clear understanding of exactly what transpired during contract negotiations between the AEC, the BOB, and the utilities. As a result, Congressional reaction

against the contract action was widespread and bitter, with the Commission receiving the full brunt of its force. As James L. Grahl, Director of the American Public Power Association's Atomic Energy Service, has explained, "with its involvement in this unsavory proposal, the AEC 'lost its halo'. Congress never since has regarded it as a non-political agency."[32]

The center of most extreme outrage was the Joint Committee on Atomic Energy. With considerable justification, the Committee concluded that the Administration had done itself, and the nation's atomic energy program, a serious disservice by its weird and highly questionable handling of this affair. Almost immediately, the Committee abandoned any pretext of leaving 'hands off' various administrative details which it had previously respected as falling within the Commission's privileged area of operations.

The handwriting was on the wall when Senator Anderson rose on the floor of the Senate in July, 1955, to comment on the appointment of a new AEC General Manager, an individual who, according to the Atomic Energy Act, "shall be appointed by the Commission, shall serve at the pleasure of the Commission, shall be removed by the Commission, and shall receive compensation at a rate to be determined by the Commission...".[33]

In Senator Anderson's words:

> "We (the Joint Committee) had a discussion as to who is to succeed General Nichols as the General Manager of the AEC. I had personally felt that Mr. Cook (the Associate General Manager) had not been the best negotiator the Government could have had in the Dixon-Yates matter. I had felt that he had gone out of his way to try to help the Dixon-Yates group in every possible fashion...
>
> "As chairman of the Joint Committee on Atomic Energy, I took rather violent objection and exception to the possibility that Mr. Cook might be appointed General Manager.
>
> "Inside a staff meeting, a statement was made that because of the objections of the chairman of the Joint Committee on Atomic Energy, it was unfortunate that Mr. Cook could not be made General Manager at this time. I say he can be judged very quickly this afternoon when he testifies. I say that if he tells the truth regarding what happened when he went to the Bureau of the Budget, we shall know more about his qualifications, and out of this long series of endurances, there may finally come some good to the American people."[34]

The most heated area of controversy was not that of administrative appointments, however. It was, and has remained to this day, the area most closely related to the Dixon-Yates affair, itself - that of atomic power development and utilization. As former AEC staff attorney James L. Morrison points out, "prior to 1954, while there had been some Congressional prodding to accelerate reactor development, Congress did not attempt to impose requirements as to program direction. The years since, however, have seen a startling increase in assertion of Congressional direction. This increase has been accomplished through the appropriations process."[35]

By way of background, under the original McMahon Act of 1946, the nation's atomic power program represented what has been described as "an island of socialism in the midst of a free enterprise economy,"[36] completely controlled and dominated by the Government with no opportunity for direct participation by private industry. The Atomic Energy Act of 1954 was designed to break this governmental monopoly. Yet, in passing this legislation, Congress never gave the Atomic Energy Commission specific policy guidance as to what it expected, or wanted, a 'mixed' government-industry power program to produce.

On the one hand, in reporting out the bill which finally became the 1954 Act, the Joint Committee stated "a firmly held conviction that... teamwork between government and industry...is the key to optimum progress, efficiency and economy in this area of atomic endeavor."[37] At the same time, however, the Committee asserted that "the efforts of free enterprise, using its own resources and moneys, are (not) by themselves adequate to achieve the speediest possible attack on the goal of peacetime power."[38] The 1954 Act, itself, was extremely vague, merely asserting that one of its purposes was to provide "a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public"[39], and then specifying numerous details with regard to licensing and other practical aspects of the program. As one observer has noted, Congress "equipped the Commission with a number of broad powers and then hedged these round with limitations that reflected certain cherished but not wholly consistent Congressional policies."[40]

The Commission found itself in a difficult position. With no clear legislative mandate, it was not sure whether it should attempt to encourage industry to take a diversified experimental approach to the atomic power field, designed primarily to advance 'the state of the art', or whether it should encourage industry to work on the more proven types of reactors which might be expected to produce the maximum power output. Actually, there was disagreement within the AEC on this point, as one of the Commissioners, Thomas E. Murray, argued for a vigorous program stressing total power output. After viewing the low-cost conventional fossil fuel and hydro-electric resources of the United States, however, the majority of the Commissioners decided to concentrate on an experimental 'partnership' approach through its "Power Demonstration Reactor Program" which attempted to encourage industry to take on new reactor projects via such inducements as AEC contracts to finance the costs of industrial research and development work, AEC agreements to do free research for industry, and AEC waivers on use charges for fuel.

By 1956, this 'partnership' program was beginning to lose momentum as industry displayed increasing reluctance to tackle experimental reactors involving high costs and negligible profit potentialities. The Commission took the position that this was a difficult new field, and that experimentation was proceeding as well as could be expected. The Joint Committee, on the other hand, looked with increasing alarm at the small total kilowatt power projections, and expressed concern that if action was not taken to stimulate atomic power output, we would fall seriously behind foreign competitors, especially the USSR, and the United Kingdom which was now completing its Calder Hall project.

Within a short time, the issue came to be regarded as a 'public versus private power' controversy between the Committee and the Commission,

and this ideological consideration played a major part in the Congressional debates that lay ahead. The writer agrees with Commissioner Murray's contention, however, that this was largely a false issue.[41] Actually, in the writer's opinion, at the base of the controversy was the fact that initially the Joint Committee had not been explicit in providing clear statutory directives which made plain the fact that it wished to stress total power output as the national policy objective. Indeed, during 1955, the second year of the PDR program, the Committee displayed only lukewarm interest in a bill proposed by Senator Albert Gore which would have authorized the Commission to construct six demonstration power reactors. Then, only one year later, on June 29, 1956, the Committee, with dramatic suddenness, unanimously reported out a blockbuster, the so-called 'Gore-Holifield Bill,' directing the AEC to proceed with a $400 million program of direct Governmental construction of prototype and large scale reactors.

It is questionable as to the amount of background preparation that went into the Gore-Holifield proposal. Certainly it represented an abrupt attempt to legislate an all-out crash program, for this bill, as amended, would have (1) authorized and directed the Commission to proceed with the construction under contract "as soon as practicable" of large-scale atomic power reactors designed to demonstrate the practical value of such facilities for the generation of electric energy in commercial quantities; (2) authorized and directed the AEC "as soon as practicable" to develop and construct prototype reactors of advanced design, not to exceed 50,000 kw in electrical capacity; and (3) made the Commission responsible for a "vigorous" program of international assistance in atomic power development.

Thus, after almost two years of confusion, the Joint Committee decided to cast its vote in a most forceful manner for both the "kilowatt race" and prototype experimentation, but on a Governmental, rather than a private industry basis. The question of why the Committee communicated its decision in a 'directive' fashion is not entirely clear, but there is considerable evidence to indicate that the JCAE had decided the Commission was deliberately sabotaging a more vigorous power program and that mandatory language was necessary. Note, for example, the startling exchange between Rep. Sterling Cole, the leading Republican member of the Committee, and a fellow representative during the floor debate on the Gore-Holifield proposal:

Mr. DIES: If the Commission is ready and willing to embark on this new field, what is the necessity for this legislation?

Mr. COLE: I tried to indicate in my remarks, I feel this legislation is not necessary; that the Commission now has the authority to do everything that the bill intends to cover.

Mr. DIES: I understood the gentleman was one who helped to prepare the bill and was in favor of it.

Mr. COLE: I did help to prepare the bill because I am in favor of accelerating and stepping up the program...I am not going to allow myself to be in the position of resisting legislation which has as its purpose the acceleration and stepping up of the program... 42/

Thus, the suspicion and mistrust which had originally grown out of the Dixon-Yates affair was still apparent. At a special Committee hearing

on the new bill, AEC Chairman Strauss objected strongly against the provisions which "directed" the Commission to construct reactors, pleading for permissive rather than mandatory language on the grounds that the AEC "hates to be flogged as tardy schoolboys for not having done a better job." Yet when Chairman Strauss asked, "do you think for a moment if you passed this bill, and Congress passed the bill, that we (the AEC) would go at it half-heartedly?". Committee member Pastore replied bluntly, "I do not think that you would build the reactors."[43]

Due to heavy Administration opposition, the bill was defeated in the House by a close 203-191 vote after narrowly passing the Senate 49 to 40. Yet the Commission did not gain any long-range victory from this action for, by now, the question of atomic power development had turned into a highly partisan issue (as the House vote of 176 Republicans against, and 174 Democrats for, the bill indicates), and the Joint Committee girded itself for the second legislative battle which was certain to take place in 1957.

This second legislative battle was notable for the complete zig-zag which it represented in the Joint Committee's approach to the field of atomic power development. Whereas prior to the Gore-Holifield fight of the previous year, the Committee had provided no firm statutory guidance to the AEC in the area of atomic power development, it now attempted to move into the field 'lock, stock, and barrel', and exercise complete domination over the smallest details of the program. In retrospect, it is clear that the 1957 authorization and appropriations controversy marks the high point in what attorney Morrison has referred to as the Committee's "clear invasion of the executive function."[44] As a prelude to the battle, the Joint Committee was first successful in increasing its legislative control over the Commission by securing the amendments to the 1954 Atomic Energy Act already noted, the most significant being the requirement for Committee authorization of all 'partnership' power projects under the Commission's Power Demonstration Reactor Program.

The Committee then proceeded to write the Commission's new authorization legislation and, in so doing, it again attempted to dictate its will to the AEC with respect to the power development program. Unlike the 1956 authorization battle, however, which had revolved around the expenditure of large funds for broad reactor categories, the 1957 fight was not basically a question of finances. Instead it centered around three specific projects added to the AEC program by an 11 to 7 Committee vote which was split strictly on party lines, (with the one exception of Republican Senator Henry Dworshak who voted with the Democratic majority). These projects were: (1) 3 million dollars for design studies of a large reactor, primarily to produce plutonium but possibly power also; (2) 40 million dollars to build a 40,000 kw natural uranium, gas-cooled reactor; and (3) 15 million dollars to build an experimental 15,000 kw "plutonium recycle" reactor to develop methods for using plutonium as a power reactor fuel.

The Committee did not stop, however, after specifying the individual reactor types to be built. Its majority report also specified various technical features of the reactors, designated specific reactor locations (Hanford, Washington and Arco, Idaho), designated specific contractors to construct the reactors, and even named the branch chief within the Commission to be responsible for one of the reactor projects! In the words of the Committee's report, it was "essential that the gas-cooled reactor be assigned to the Naval Reactors Branch under Admiral Rickover (and) carried on by the (Westinghouse) organization at Bettis."[45]

Again the AEC reacted vigorously against the Joint Committee's directive and Chairman Strauss wrote two of the Republican minority members of the Committee, Representatives Cole and Patterson, as follows:

> "The majority report, in our opinion, goes far beyond the requirements of the bill and pursues a policy of directing AEC program implementation in detail.
>
> "The majority report not only undertakes the technical selection of the reactor types to be built by the Government - including their description in terms that deny developmental flexibility to the Commission - it specifies the AEC installations at which the reactors should be built, and indicates the AEC contractors who should be used. In the case of the gas-cooled reactor, the majority report not only designates the equipment company that should receive the contract, it twice states as 'essential' that the project should be assigned within the AEC to a particular branch of our Division of Reactor Development and to the particular officer in charge of that branch.
>
> "...These attempts at detailed administrative control and direction over the Commission's peacetime reactor program, via Committee report, give us great concern. If followed in all its details, the majority report would deprive AEC of the discretion necessary to every operating agency to adjust the details of its program..." 46/

With strong support from the White House and the Republican minority on the Committee, the Commission was able to have Congress reduce the gas-cooled project construction directive to a 3 million dollar "design and engineering" study - which was subsequently assigned to the Civilian Power Reactor Branch and contracted to Kaiser Engineers - but, on the whole, the Joint Committee's program was substantially adopted by the Congress.

Hence, there was no doubt that, by 1957, the Joint Committee and the Commission were jointly running the nation's atomic power program and, as Professor David F. Cavers has stated, that the Committee was successfully getting away with a policy of "encroaching persistently on a domain that normally is reserved to the executive."[47] The important question remained as to whether this development was a temporary phenomenon only, or whether the JCAE intended to pursue this course of action into the indefinite future.

The 1958 authorization debate represented somewhat of a truce, largely because the Committee realized that Chairman Strauss' five year term expired on June 30th, and it hesitated to overcommit itself again before knowing whether Strauss would be reappointed or whether a new AEC chairman would take his place. Although the 1958 debate may have been somewhat less heated than those of the previous two years, however, the Joint Committee still recommended a total construction program of 386.7 million dollars, about double that requested by the Administration. In addition the Committee could not completely ignore the type of detailed programmatic intrusion which had characterized its previous year's performance. Thus, it added several design studies on which the Commission was to report the following spring (i.e. $6 million for two "large-scale"

reactors and one "intermediate size prototype"; $2.5 million for a heavy water moderated power reactor; and $750,000 for a power reactor of advanced design using nuclear superheat), and also prescribed in some detail the nature of the contractual arrangements for the Power Demonstration Reactor Program, "arrangements which differed substantially from the basis on which the AEC and the proposers were then negotiating."[48]

Of most significance, however, was the fact that in June, 1958, Chairman Strauss did resign, as he explained in his letter to the President, because "circumstances beyond the control of either of us make a change in the chairmanship of the Commission advisable."[49] The press had little doubt as to the specific nature of these circumstances. As The New York Times editorialized, "the resignation results from the political party feud launched against Mr. Strauss by the Democrats on the Joint Committee on Atomic Energy,"[50] and Newsweek magazine commented further, "Democrats on the Joint Committee...sputtered at the mere mention of his name. In fact, Senator Clinton Anderson bluntly told President Eisenhower they would fight to the last ditch to prevent his reappointment."[51]

Here, then, was a test case of whether the JCAE's aggressive invasion into the details of the AEC power program had been an issue primarily of personalities or, rather, an issue which went deeper than this and perhaps related directly to the unique structural position which the Committee occupied vis-a-vis the AEC. The answer was not long in coming. On February 17-18, 1959, the new AEC Chairman, John A. McCone, made his first public appearance before the full Committee since he had been named to the Commission, where he proceeded to summarize the AEC's power program to date, and state the Commission's request for authorization of the specific power projects it wished to undertake in fiscal year 1960.

During the course of his testimony, Chairman McCone characterized the past five years as having "paid off in remarkable progress" and as having been "a good program, both in terms of technical progress and in terms of participation and cooperation by industry." The Committee's reaction, both to the programmatic summary and to the new AEC authorization request was, to put it mildly, rather frigid. Senator Anderson expressed "disappointment" in the Commission's "provisions with respect to the construction of experimental prototypes;" Senator Gore, who by now was calling for a one million kilowatt atomic power crash program, viewed the authorization request as "timid and wholly inadequate" and added, "the AEC chairman has commented...that we have had a good program. I think we have had a miserable program. It has failed miserably, else you might not be chairman of the Commission,"; and Representative Holifield asserted that it was "not true" that the United States had made progress in atomic power development "because private industry has just not come forward and done the job that it was expected to do."[52]

The sharpest outburst occurred, however, when Chairman McCone was handed a press release, issued by Rep. Holifield, while he was still undergoing questioning before the Committee late on the afternoon of February 18th. In this release, which was severely critical of the AEC power program, Holifield had stated, "I am disappointed at the inadequate support the Executive Branch proposes to give to its atomic energy program through new capital facilities and improvements and through the cooperative power program."

McCone was stunned. In a voice shaking with emotion, he interrupted his testimony to exclaim:

"I would like to make one statement. I just don't know why I am here, Mr. Chairman. I really don't know why you asked me up here because I have spent two days now trying to give you the background, the reasoning why we are doing these things, which we arrived at after months of work. I find Mr. Holifield makes a press release criticizing everything. He had it all printed and written up before he even heard what I had to say... I wonder why you do things like that. I am working hard at this job, Mr. Holifield, day and night, and I don't like to have this thing released...If you want me to come up to testify, listen to me, and then make up your mind what you think about what I say." 53/

Representative Holifield's rejoinder was curt and to the point. He responded, "I did listen to you and this came off the press not over 30 minutes ago...I am not going to quarrel with you in your judgement nor am I going to become heated about it. All I can say is this: It is an old, old axiom, if you can't stand the heat don't go into the kitchen."54

It must have been small consolation, indeed, when Senator Hickenlooper and Representative Van Zandt came to Mr. McCone's defense on behalf of the Republican members of the Committee, for the new AEC chairman could not help but realize that the JCAE's antipathy for the Commission and its program was not to be resolved simply by the appearance of a new chairman alone. Yet, it must be admitted that the relationship between the Committee and the Commission has been less openly heated during the past two years under Mr. McCone's chairmanship, and as a consequence, the degree of JCAE antagonism towards the AEC program has been more subtle and more difficult to document.

One area that sheds light on the nature of the more recent relationship, however, is that involving the Euratom program - an area which, incidentally, indicates that the Committee-Commission atomic power controversy has not been confined to the domestic scene alone.

Under new authority granted by the Atomic Energy Act of 1954, the AEC proposed, and the Congress agreed, to consummate an "agreement for cooperation" with Euratom in September 1958, providing for United States grants, subsidies and loans to this six member European group (i.e. France, West Germany, Italy, and the Benelux nations) which also made up the European common market and the coal and steel community.

Although it favorably reported out the cooperative legislation, "the Joint Committee leadership gave the plan a cool reception."55 In this regard the Committee did not appear to be concerned over any potential violations of the nation's atomic secrets or misuse of nuclear materials (since there were specific safeguards to cover these contingencies in the 1954 Act), but rather over a variety of lesser issues. Rep. Holifield, for example, criticized the Euratom program as "complete hypocrisy" on the grounds that it was basically an international version of the rejected Gore-Holifield domestic acceleration program, noting bitterly that "...that which was socialism in the TVA now becomes acceptable on the Euphrates."56 Likewise, Holifield and other Committee members expressed a fear that a successful Euratom program would be "used as an excuse for not proceeding with a vigorous domestic program."57 However, the major JCAE concern seemed to be centered over the fact that the program might favor the big domestic suppliers, such as Westinghouse and General Electric, and freeze out smaller firms which lacked comparable financial resources and fabrication experience.

As a result, the Committee again turned to its now familiar technique of placing a variety of detailed restrictions on the administration of the program, adding criteria for reactor selection and fuel-cycle guarantees and specifying that all individual contracts between European utilities and United States manufacturers would have to be subjected to JCAE scrutiny on a case-by-case basis to assure proper control over fuel subsidies. Then, as regards substantive proposals, the Committee discarded the program's original emphasis on reactors of proven types and vaguely indicated that consideration would be given to a "reasonable diversity of plant types and designs."[58]

As Professor Cavers has noted, "this grudging action (reflected) in part the Committee's insistence in driving with a short rein...One may sympathize with the Committee's concern to preserve competition in overseas business and its desire not to allow industry to exploit the occasion unfairly, but the situation scarcely (lent) itself to legislative scrutiny on a case by case basis."[59] One hesitates to speculate as to what would have happened to our 'Point Four' and similar foreign assistance endeavors if Congress had decided to exercise a comparable degree of rigidity in these other areas.

Whatever fears the Joint Committee may have had with respect to the success of the Euratom program proved to be unfounded, however. By early 1960 it had become painfully obvious that the original Euratom agreement - which had called for the completion by 1963 of six nuclear power plants with a total capacity of one million kilowatts - had been frightfully optimistic. As conventional fuel supplies increased on the European market, the European industrialists - like their American counterparts - displayed an increasing reluctance to enter the atomic power field, and as of spring 1960, only one firm, the Italian utility SENN, was proceeding on a program to construct a reactor by the agreement's original 1963 deadline. The impact of this failure on the Joint Committee has been interesting. According to a recent issue of Nucleonics magazine, one Joint Committee official charged that "they (Euratom) do not want to see reactors built unless they get a Christmas tree with donations hanging all over it from the American people." And this same official added, "Euratom is a pretty cold corpse right now...and it will undoubtedly die within a short time."[60]

It would be folly, of course, to place major responsibility for the present sorry plight of the Euratom program at the doorstep of the Joint Committee, for certainly factors external to the Committee have been the primary cause of the slowdown. Yet the fact remains that for five years we have been groping for a consistent national atomic power policy, and the question must be raised as to whether the Joint Committee does not bear a major responsibility for the present status of our nuclear power program, both domestic and foreign. The question is not raised in any strict academic sense. The author well realizes that the Joint Committee has displayed little use for what it feels to be the 'ivory tower purist' who expresses concern over the Committee's continual violations of the separation of powers concept. When Professor Cavers made his protest against the Committee's "persistent encroachment into the executive area", for example, Messrs. Anderson and Ramey retorted, "suffice it to say, there has been no criticism of the fact that the United States now has additional and better nuclear weapons, more raw and fissionable materials, a growing nuclear Navy, and an expanding research and development program all of which have been urged by the Joint Committee...".[61]

Rather the question relates to the purely practical consideration of whether - during its schizophrenic shifting from no clear initial policy guidance at all, to a major emphasis on the abstractions of a mythical 'kilowatt race', to a more detailed obsession over what contractor would build what reactor on what site - the Joint Committee has not been remiss in failing to provide the type of clear-cut policy guidance in the atomic power field which falls quite cleanly within the responsibility of the legislative branch.

That such broadly formulated policy has been lacking is without question. As early as 1957, one of the Joint Committee's own study groups of reactor experts reported that the number one problem with respect to the nation's atomic power program stemmed from the fact that "we need clear-cut national objectives, both with respect to domestic and international development."[62] And, writing in 1960, ex-Commissioner Murray, certainly no critic of the Joint Committee, is forced to conclude, "when we examine the relations between the Congress and the Atomic Energy Commission, we find that (they)....actually leave many problems of policy-making unsolved... When we come right down to it, it is not easy to say precisely who makes atomic policy in the United States or how it is made. If one were to try to trace the making of a basic nuclear policy decision...he would probably get lost or give up before he had completed his quest."[63]

In fairness to the Joint Committee, it must be recognized that a variety of circumstances may have contributed to this labyrinth. The fact that the legislative and executive branches have been divided on a party basis certainly has had a basic bearing on the situation, as has the fact that the executive branch has generated, internally, much of the information upon which legislative policy in the atomic energy area must be based (although this latter consideration must be minimized in light of the Joint Committee's repeated claims that it keeps "fully and currently informed" on everything there is to know in the atomic energy area).

In addition the question should be raised as to whether Congress did not expect too much when it first granted extremely broad discretionary powers to the Atomic Energy Commission and then named a single legislative committee to bear sole responsibility for both policing and promoting the program of this executive agency. The "Palfrey Report" on the AEC's licensing program raised the question as to whether it was wise for Congress to expect the Commission to both promote and regulate the atomic energy industry at one and the same time,[64] and perhaps the question can here be raised as to whether it is wise to expect a single legislative committee to discharge similar potentially conflicting promotional and policing responsibilities. Finally, it must be emphasized that sloppy policy formulation is certainly not confined exclusively to the atomic energy program. As Professor V. O. Key, Jr. has pointed out with respect to Congressional committees in general, "the interaction between legislation and administration, with the accompanying division of power makes it quite difficult to place responsibility for action or inaction...The continuing and inevitable attempts of Congress to manage the business of administration diffuse responsibility and confuse the public."[65]

Yet the fact remains that the degree of diffusion and confusion of policy and programmatic responsibility which has characterized the JCAE-AEC relationship has been so pronounced that any objective observer must question the viewpoints, outlined at the introduction of this paper, that the Joint Committee is <u>the</u> answer of representative democracy to the problems of atomic control; that all we have to do is create a joint

committee and all will be sweetness and light. For one possible answer as to why such sweetness and light has not prevailed, we must turn to the third area of investigation; that which involves the relationship between the Joint Committee and the Congress, itself.

(3) Abdication of Congressional Responsibility

It is difficult to describe the precise nature of the informal relationships between the Congress and any of its standing committees, and especially so in an area as technically complex and historically security-ridden as that of atomic energy. Yet from time to time, the underlying forces which shape these relationships come to the surface, and in the case of the JCAE, one such occasion was when Representative Howard Smith, who is certainly not noted for his legislative meekness, called up the House Resolution on the Gore-Holifield acceleration bill for debate as follows:

> "I understand it is quite a controversial subject. The hitch in the bill is that there is violent disagreement between the Atomic Energy Commission, which is opposed to the construction of these reactors, and the Congressional Joint Committee on Atomic Energy, which promotes this bill and is in favor of it.
>
> "I have been unable to learn the merits of it, and I think you will be unable to learn the merits, because none of us are scientists...I find myself, and I expect you will find yourself, in the very embarrassing position, however, of having to decide this dispute between the scientists and the Members of Congress...I think we were placed in a very unfortunate position, and I am extremely disturbed and disappointed that this rift has occurred between our scientists and our statesmen. I do not know how you will settle the proposition, but that, briefly, as I understand it, is the story that is before us." 66/

Representative Smith's remarks highlight the sense of almost complete submissiveness and awe that has characterized the approach of many Congressmen to the atomic energy field. During this same debate, for example, Representative Keith Thomson of Wyoming stated that "Congress has no business legislating in this field" because it lacked the information to direct the executive branch, and he added, "certainly I do not know enough about it to vote intelligently for the bill."67

To a certain extent the Joint Committee's position in the atomic energy field is analogous to that occupied by the great majority of Congressional committees which attempt to dominate their particular areas of functional concern. Yet, as has already been noted, the Joint Committee does not regard itself as being the same as other Congressional committees, and certainly the unique degree of domination which it has exercised over the rest of the legislature on all matters atomic goes beyond that of the normal committee. Indeed, as one observer has noted, "to a large extent, this Committee (has become), in effect, <u>the</u> Congress as far as atomic energy matters are concerned."68 At least three factors appear to have been responsible for this development.

The first was the historically secret nature of the atomic energy program itself. Here certainly was the original factor which gave the Joint Committee its legislative monopoly over the atom. As the Committee has explained in one of its own reports, "its findings have had to be accepted by the rest of Congress...because the Committee has, of necessity, had to operate behind very strict security regulations."[69] The effect here was two-fold. During its formative days the Committee displayed considerable reluctance to share any data with the rest of Congress, and in this same period, the rest of Congress displayed a like reluctance to enter very deeply into a field where it was so obviously ill-informed. As regards the former point, "the Committee did not feel impelled to act as a focal point for public or Congressional discussion of the atomic program...It communicated very little with Congress as a whole in the early years...In fact, the members relied almost exclusively on executive hearings. During 1947 only the confirmation hearings were open; in 1948, the Joint Committee's public sessions, five in number, dealt with labor problems at atomic energy installations. Only one Committee report went to the Congress, and it was of a rather tentative character. All in all, the Joint Committee felt that the program should be considered only by those who were privy to the program secrets."[70]

As regards the latter point, one need look no further than to the early appropriations hearings, which were the responsibility of the House and Senate Sub-committees on Independent Offices, to see the degree of Congressional bafflement with the more complex and secret areas of the atomic energy program. For example, in 1951, when the Commission requested over one billion dollars in its regular budget request and contract authority, "approximately 90 percent of the space in the printed House (appropriations) hearings...(was) given over to discussions concerning the correctness of a fee of $180,000 for the Roane-Anderson Company, a contractor operating the town of Oak Ridge for the Commission."[71] In a similar vein, when Rep. Albert Thomas, chairman of the House appropriations subcommittee in charge of the AEC budget, asked the AEC Director of Military Application how the Commission intended to spend the $210 million it had requested for the 1950 weapons program, he was told that "the real breakdown on that begins in this secret volume". Mr. Thomas replied, "we will let you tell us what you think we ought to know and no more. We will not press you too hard on that."[72]

The second factor shaping the Committee's position of dominance has been that of its own philosophy with regard to atomic affairs. As one JCAE member has explained, the Committee was created to oversee the national atomic program "on behalf of Congress",[73] and in the process, "the Joint Committee has replaced the public scrutiny that ordinarily follows normal government operations."[74] Thus, growing out of its earlier position of a security-based monopoly, the JCAE forged a continuing philosophy of exclusive jurisdiction over all atomic affairs, whether or not security considerations were of paramount importance. For example, as one national weekly explained in a rare burst of earlier criticism against the Committee's handling of the 1954 Atomic Energy Act, "the bill for revision of the 1946 Act was poorly prepared and tardily presented... The Committee went off on its own, held only (limited) hearings in June-July 1953 and in May-June 1954 and did not submit its complicated 104 page report (to the Congress) until July 12."[75]

The Committee's position of complete domination of the more generalized aspects of the atomic energy program has been alleviated during recent years by the so-called "202 Hearings" which are generally

held in open session each year to receive information on the "development, growth and state of the atomic energy industry." Yet the very technical complexity of many of the issues discussed at these hearings makes it difficult for the average Congressman to have any true understanding of what is at stake. In an interesting shift, the secrecy which characterized the earlier atomic information program is now giving way to an overwhelming deluge of extremely technical data, with both developments being equally effective in preserving the Joint Committee's legislative monopoly, until today it is the Committee's unique technical specialization that places it "in an unmatched position from which to project (itself) into the foreground of national politics."[76]

The Committee is, of course, fully aware of this fact. Like its other Congressional committee counterparts, the JCAE "has always been conscious and jealous of its own authority and has sought, from time to time, to expand the area of its influence."[77] An interesting illustration is to be found in a 1956 JCAE report in which the Committee stated that it "has... had to examine the operations of the Commission to see whether or not such operations came within the law since there is no way the Commission's operations can be reviewed by a court."[78] This is certainly a strange and misleading assertion for the Committee to make. Admittedly, while the secret nature of the atomic energy program prevented some earlier cases from going to court,[79] the more recent actions of the Commission have been subjected to the normal processes of law, as the late U.S. Court of Appeals (District of Columbia) 2-1 decision to set aside the provisional construction permit which the AEC granted to the Lagoona Beach fast breeder reactor group indicates.[80]

The Committee has been aided in securing its position of dominance, however, by the fact that such external excursions into the atomic energy program are quite rare. Actually, one of the chief sources of Committee power stems from the fact that the general public has displayed relatively little interest in, or understanding of, the great majority of atomic energy matters, and as a consequence, little public pressure has been exerted upon individual Congressmen to keep fully abreast of the less flamboyant atomic developments. Thus, when a floor debate does take place on atomic matters, it is largely limited to issues which transcend the AEC program, itself. The lengthy Senate filibuster on the 1954 Act, for example, revolved around three issues - public vs. private power, exclusive patent rights for licensees, and the Dixon-Yates contract - which only incidentally grew out of the atomic energy program, and which were comprehensible to all Congressional personnel whether or not they were well versed in atomic affairs. In a similar vein, it is interesting to note that, despite its dominant position, the Joint Committee has been quite unable to get many of its more grandiose power programs, such as the Gore-Holifield proposal, through Congress when the Administration has elected to publicly fight against them, and when such measures involve large budgetary implications which are quite readily comprehensible to economy-minded Congressmen.

The third basis of JCAE influence arises from the fact that the Committee is a joint committee, the only active joint committee which exercises continuous surveillance over a specific function area of executive operations. The advantages of this position are obvious. As Cavers has explained, "its special competence and authority and its 'currently informed' staff have given (the Committee) an unusual ability to put pressure on the executive."[81] Likewise, these factors have given the Committee unusual ability to put pressure on the legislature. Spared the inter-cameral checks and balances which limit the authority of the normal Congressional committee, the JCAE has been able to serve as the

single legislative and authorization focal point for Congress on all atomic matters without any further possibility of legislative appeal. The degree of bicameral continuity and leadership which the Joint Committee has been able to secure from this arrangement (e.g. some Committee members such as Senators Jackson and Lyndon Johnson shifted from the House to the Senate branch of the Committee after being elected to the Upper Chamber), has given the Committee a unique opportunity to exert its domination over both the executive and the legislative branches. In the words of Messrs. Anderson and Ramey, "the tenure of many of its senior members goes back to the original Joint Committee appointments in 1946, and several other members number eight or ten years of service. This is in contrast with the Atomic Energy Commission which currently (i.e.1959-60) has four new Commissioners and a new General Manager."[82]

Thus, the Joint Committee is able to avoid the frustrations and delays which accompany the more normal in-fighting between House and Senate committee counterparts. However, by this very fact, it enjoys an immense amount of power above and beyond that of the normal committee. In effect, as Harold Greene has noted, "a five-man Commission operating on a majority basis provides some measure of democratic control of policy development, but even assuming that the AEC and the Committee dealt at arms length, it would mean at best that the closed-door decisions of a five-man Commission would be subject to legislative review only by, in effect, an eighteen-man closed-door Congress."[83]

In essence, by virtue of its 'expertise' and complete control of information, the Joint Committee has carved out a distinct area of governmental activity and said, 'hands off; this is our responsibility.' Under today's Congressional committee system such action is not, in and of itself, an unusual development. The complicating factor becomes apparent only when the JCAE philosophy is superimposed upon the unique environmental factors - the secrecy, technical complexity, widespread public apathy, and the Committee's extreme position of legislative monopoly - which have characterized the atomic energy program.

The majority of committees - Foreign Affairs, Agriculture, Armed Services - usually adopt a similar attitude of expert familiarity with their respective areas of responsibility, an attitude which signifies a desire on the part of these committees to guard their given or assumed prerogatives. Yet once such committees report to the Congress proper, widespread - and often spirited - debate generally ensues. There is, in effect, enough Congressional and public familiarity with, and interest in, the given area under consideration to induce an active expression of general legislative scrutiny. By and large, such has not been the case in the atomic energy area.

Thus, the dilemma becomes readily apparent. In a Congress already overburdened with complex problems which touch upon every aspect of domestic and international life, much can be said for the establishment of a single group of legislative experts to serve as the Congress in a complicated and confusing scientific and technical area of major concern. Yet, through this process, Congress is transferring a tremendous amount of power to a small and select group; power which can be used for evil, as well as for good; power which can be used incompetently, as well as competently.

Since this analysis has concentrated upon the potential limitations of the joint committee device, it has been necessary to highlight some of the more negative aspects of the JCAE's operations and ignore the

positive contributions which the Committee has made to the nation's atomic energy program. Yet the aim of this paper has not been to discredit the Joint Committee, but rather to raise some basic questions concerning its role, and effectiveness, as a legislative device:

> What are the proper limitations on the authority of the Committee with respect to its particular area of executive concern; with respect to related executive departments and agencies?
>
> Is it desirable or justifiable for the Committee to assume responsibility for the detailed administrative direction of an executive program, or to require case-by-case scrutiny of individual contract actions, domestic and foreign, growing out of this program?
>
> In technically complex and/or highly sensitive areas of government operations where Congress feels it necessary to grant broad discretionary powers to an executive agency, is the joint committee device the most effective way to monitor such an agency? If so, is it reasonable to expect a single legislative committee to bear sole Congressional responsibility for both promoting and policing the agency's program at one and the same time?
>
> Finally, is it justifiable for Congress, under any circumstances, to abandon the normal bicameral arrangement and abdicate responsibility to any one legislative committee for a vital area of national policy without the possibility of further appeal and review by other informed legislative groups?

Perhaps the nation's atomic energy program is stronger today because of the existence of the Joint Committee on Atomic Energy. Yet this speculation should not be accepted as a foregone conclusion. To the extent that this paper serves as a stimulant to further critical analysis of this unique legislative mechanism, it will have fulfilled its purpose.

JOINT CONGRESSIONAL COMMITTEES
(1960)

	Committee	Date Established	Members	Staff	Nature
1.	Library	1843	10	2	Standing
2.	Printing	1846	6	8	Standing
3.	Executive Papers	1889	4	1	Standing
4.	Internal Revenue Taxation	1926	10	26	Standing
5.	Federal Expenditures	1941	14	4	Standing
6.	Economic	1946	16	13	Standing
7.	Atomic Energy	1946	18	21	Standing
8.	Indian Administration	1950	6	-	Standing
9.	Defense Production	1950	10	5	Standing
10.	Immigration and Nationality Policy	1952	12	-	Standing
11.	Museum of History and Technology	1955	10	-	Select
12.	D.C. Metropolitan Area	1958	6	2	Select
	Total		122	82	

APPENDIX I

Smallwood JCAE

APPENDIX II

THE JOINT COMMITTEE ON ATOMIC ENERGY
(86th Cong., 2d Sess., 1960)

Chairman: Sen. Clinton P. Anderson (D. - N.M.)
Vice Chairman: Rep. Carl T. Durham (D. - N.C.)

Senate		House	
Richard B. Russell	(D. - Ga.)	Chet Holifield	(D. - Calif.)
John O. Pastore	(D. - R.I.)	Melvin Price	(D. - Ill.)
Albert Gore	(D. - Tenn.)	Wayne N. Aspinall	(D. - Colo.)
Henry M. Jackson	(D. - Wash.)	Albert Thomas	(D. - Texas)
Bourke B. Hickenlooper	(R. - Iowa)	James E. Van Zandt	(R. - Pa.)
Henry C. Dworshak	(R. - Idaho)	Craig Hosmer	(R. - Calif.)
George D. Aiken	(R. - Vt.)	William H. Bates	(R. - Mass.)
Wallace F. Bennett	(R. - Utah)	Jack Westland	(R. - Wash.)

Executive Director - James T. Ramey

Subcommittees

Agreements for Cooperation - Senator Pastore (Chrm.)

Legislation - Rep. Holifield (Chrm.)

Raw Materials - Senator Gore (Chrm.)

Security - Rep. Thomas (Chrm.)

Community Facilities - Rep. Aspinall (Chrm.)

Military Applications - Senator Jackson (Chrm.)

Research and Development - Rep. Price (Chrm.)

Radiation (Special Subcommittee) - Rep. Holifield (Chrm.)

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Presidential Address

THE SUPREME COURT AND "THE MOMENT OF TRUTH"

Carl Brent Swisher

The Johns Hopkins University

American Political Science Association
Statler Hilton Hotel
New York City
September 8, 1960

THE SUPREME COURT AND "THE MOMENT OF TRUTH"

Carl Brent Swisher

The Johns Hopkins University

This annual ceremony of our non-partisan Association is being held at a time when most political scientists are preoccupied with the events of a fateful national election. To avoid any implications of partisanship, it seems best on this occasion to eschew politics in the conventional sense and to concentrate on institutional analysis not applicable to the current conflict. This discussion will therefore deal with the Supreme Court and with the Court primarily as an institution, rather than with problems of changing personnel or the political implications of particular decisions. It will assume that institutions are important in terms of their intrinsic nature and that the kind of institution to be used for a particular governmental task depends largely on the kind of task to be performed, with room for exceptions in exceptional circumstances. So it is that the Court will be presented not in isolation but as a part of the judicial system at whose apex it stands, and will be discussed in terms of the assumptions which lie back of and dictate its rituals, routines and procedures, and which have a great deal to do with determining its efficacy for the tasks allocated to it.

Because analysis of hallowed institutions and ritualized performance is often incorrectly identified with the expression of hostility or disrespect, with only deference permitted on the part of him who would leave the ritual or the institution with the stature it had when he approached it, it is emphasized that the purpose here is not to attack or to disparage but to analyze and to encourage

further analysis, with creative ends in view. Political scientists as critics of all aspects of government have an obligation to do more than merely defer where our courts are concerned, even at the risk of the dispelling of halo, but it behooves them to make clear their ends and aims in order to avoid misunderstanding. The intent in this discussion is to highlight the intellectual procedures involved in the hybrid performance of deciding cases and at the same time shaping the development of law, with an invitation to discriminating thought about the judicial process as distinguished from legislative and executive processes in American government.

A further intent is to express enthusiasm for the efforts of those of our profession who are likewise delving into institutional subject matter. Political scientists, in order to deal effectively with the materials of the judicial process, must look at the process for what it traditionally has been and for what it is at its core, and not merely for what it is at its periphery, as we have too often done. To state the point negatively, we must not assume that the judicial process is "merely politics," unless we are willing to define "politics" with such breadth as to deprive it of much of its precise meaning or of its meaning as held in popular understanding. Particularly we must not define the judicial process as merely politics and then, as did the author of a much-discussed work a few years ago at one of our annual meetings when goaded for definition by some of our colleagues, define politics as "shenanigans." The work of the Supreme Court clearly involves politics, and at times politics in the form of "shenanigans," but it involves a great deal more, and the "more" as well as the politics is subject matter for political science.

I

Along with such other characteristics as it may incidentally possess, a court in our judicial tradition is an institution which determines the facts involved in particular controversies brought before it, relates the facts to the relevant law, settles the controversies in terms of the law, and more or less incidentally makes new law through theprocess of decision. Over the centuries of Anglo-American history our judiciary has been developed and geared to this process so that it has an integrity or integratedness peculiarly its own. In particular it has a mode of informing the minds of the responsible officers -- in this instance the judges -- which is unique and which must be kept in sharp focus in any attempt to estimate the capacity of a judiciary to perform competitively in the gray areas which lie between it and institutions which are primarily legislative or executive. Our profession has analyzed backwards and forwards and at various other angles the rituals and procedures and particular proceedings whereby legislative bodies and executives and administrative organizations arrive at decisions and carry those decisions into effect. Over against such studies we need to portray the methodology calculated to exclude from the decision-making proce things irrelevant and therefore corrupting, as antiseptic practices in our hospitals ward off invasions of germs, and to bring judicial minds to the peak of concentration needed for the right decision of the case at hand.

Tracing all the way back through the Anglo-American legal tradition and into our Roman law heritage as well,[1] we note that the basi structure for informing the judicial mind and bringing it to the peak of decision -- and this includes the mind of the jury where the jury

is a component part of the court -- has been what lawyers call the adversary proceeding.[2] The court determines rights, or guilt or innocence as the case may be, only after the case has been shaped into a clash of opposites, and usually only after counsel, by means of briefs or oral arguments or both, have engaged in trial by combat for the illumination of the mind of the court.

Part of our difficulty in getting at the merits and demerits and the peculiar significance of the trial by combat in the court room lies in the reticence or the inarticulateness of judges and other lawyers with respect to it. It has been said that in conferences on professional ethics between lawyers on the one side and philosophers and theologians on the other the "adversary system" was the place where communication broke down. Law students have been found to be disturbed by it and unable to articulate its proper limits. It is admitted that "the legal profession is itself generally not very philosophic about this issue."[3] This lack of articulateness on the part of the legal profession about the ends and aims and achievements of the adversary proceeding is a matter for regret, and it constitutes a serious handicap for those who would appraise it not merely as a device for deciding cases but also for defining and developing the pattern of the law.

While an institution thousands of years old is not necessarily to be judged in its current operations by what it was long ago, some further reference to history may be helpful for contemporary appraisal. Deeply entrenched in the minds of our forefathers was the conviction that the gods, or the one God as the case might be, intervened in the trial to bring victory to the right. We know that the Normans confidently relied on professional champions who fought for rival

claimants, with the verdict going to the claimant whose champion defeated his opponent. Theodore Plucknett notes in his history of the common law that when in this period one person brought a criminal charge against another, the accuser and the accused fought in person, with grim result. "It was deadly; if the defeated defendant was not already slain in battle he was immediately hanged on the gallows which stood ready."[4]

Over the centuries we have moved a long way from the type of trial wherein the hand of deity was supposed to determine the balance in competitions of brute strength and cunning. Courts, by themselves and with the aid of legislatures, have developed and refined procedures to shape the course of combat between opposing counsel in a civilized society. During the early years of American history the system of common law pleading held with many judges a respect not unlike that accorded to the Supreme Being. "General rules will sometimes appear harsh and rigorous," said Chief Justice Kent in 1806, "but I entertain a decided opinion that the established principles of pleading, which compose what is called the science, are rational, concise, luminous, and admirably adapted to the investigation of truth, and ought, consequently, to be very cautiously touched by the hand of innovation."[5] The rules of procedure became so intricate and required so much technical knowledge on the parts of judges and counsel as to lead to the suspicion that they often did little more than contribute to the playing of intricate games in the court room and had little more to do with justice than earlier displays of physical prowess. A movement for the codification and simplification of procedure swept away a great mass of technicalities. Yet half a century after Chief Justice Kent's paean of praise

had been voiced, Justice John A. Campbell approvingly echoed his words.[6]

II

Although the technicalities of common law pleading gradually yielded to legislative and judicial simplification, the basic pattern of trial by combat between counsel for opposing interests, with judicial supervision, remains to this day so firmly entrenched that it is hard for Americans to think of trials according to any other pattern. In a case decided in 1947 Justice Jackson declared that "a common law trial is and always should be an adversary proceeding." He contended that "discovery," a device in the new rules of civil procedure to bring about early disclosure of facts[7] to promote the early sharpening of issues, "was hardly intended to enable a learned profession to perform its functions either without wits or with wits borrowed from the adversary."[8] So it is that the battle between counsel, though not of physique but of wits, remains nevertheless a battle. Although when the trial is ended opposing counsel may companionably head together for the closest bar or restaurant and demonstrate the warmest friendship, during the course of the trial itself they oppose each other with all the skill at their command.

Since this clash of opposing forces is an essential ingredient of court room performance, it behooves us to inquire more fundamentally into the part played by counsel. A distinguished federal district judge has said that "The elementary and cardinal rule for all trial counsel in all cases is thorough preparation for both sides as to the facts and the controlling law."[9] Justice Frankfurter has remarked that lawyers should be "experts in relevance."[10] An author

on appellate advocacy contends that the basic responsibility of the advocate is "to present the law and the facts of his particular case so that the court will know what the controversy is about, and will want to decide in his favor."[11] He illustrates the latter clause by a comment of Chief Judge Benjamin N. Cardozo, of the New York Court of Appeals, who, having listened to an argument by Charles Evans Hughes, was heard to say, "How can I possibly decide against this man?"[12]

In other words, the obligation to present the facts and the law of the case is hyphenated with the obligation to win the case, even though as a matter of fact this obligation can be fulfilled in each case with respect to only one of the parties. Counsel is in a technical sense an officer of the court as well as a professional employee, and he may sense the possibility that the decision of his case may vitally affect the law of the future, but his first allegiance is nevertheless to his client, whether a person, a corporation or a government, and he must win a victory for his client if the victory can be won through the rituals of court room performance.

How do we justify in modern times the support by government of a highly ritualized trial by battle of wits as a device of determining law and facts and the rights depending on them? For the most part we justify it by using it and not talking about it. It is doubtful whether we confidently assume that God intervenes to clarify the thinking and give fluency to the tongue of the counsel who represents the side on which God wants the victory, although it may well be that a sense of rightness as well as a desire to win may serve the cause of a client. The trouble with this assumption is that it may aid at the same time both counsel and both clients, for presumably rare is

the advocate who in the course of his advocacy does not persuade himself that right is on his side.

But we presumably rely more heavily on a different factor, the stimulus of self interest on the part of each litigant. At stake is likely to be the life, or liberty, or property, or authority of the client. For the purposes of each case, counsel absorbs into himself the sense of need for victory. This for him is not just any case, this is not just any situation in which men are involved in molding the law of the future. It is a case which he for personal reasons has to win if victory be possible, whatever the fate of the opposing advocate who from his opposing position feels exactly the same way about it. We seem to assume that demonstration of the depth of caring, which derives from the depth of personal interest, will best inform the court as to the law and the facts, and produce the best decision.

And what of the position of the judge? He is of course, among other things, a referee between the warring counsel. Charles P. Curtis recorded the anecdote of two prizefighters who stood in the back of a court room where Chief Justice Lemuel Shaw was presiding. "Christ, what a referee!", one of them is said to have remarked in awe and admiration.[13] As a referee the judge's conduct is supposed to be of the essence of neutrality. A distinguished Italian commentator has said that

> When he is deciding a case the conscience of the judge should be like a blank page on which the episodes of his private life have left no mark; his extra-judicial knowledge and experience may be present only if they lose their episodic significance and assume a broader and more serene social significance, thus turning themselves into "maxims of experience" and becoming part of his general culture.[14]

It would therefore seem that the judge is asked to perform at one and the same time in dual capacities. He is to be active and alert as a referee in keeping counsel performing within the rules of the game, and utterly passive with the potentialities of a tabula rasa for the recording of reasoned arguments. He is the referee and the recorder, and then, finally, the engineer of the decision. It is through the clash of opposites in the form of reasoned arguments of counsel, of arguments perhaps impassioned but with passion held under discipline, that his mind is brought to the climax of decision, of completion, of dynamic insight -- to the "moment of truth." The combat waged before him brings his mind to the synthesis of diverse elements, to the arrangement of relevant materials, to the point of reaction to the situation as a whole, to the gestalt[15] which marks the totality to be derived from the process of the trial. The decision copes with the controversy between the parties, and goes beyond the settlement of the controversy to some degree of restatement of the law. Yet it is to be remembered that this restatement is likely to be structured not in the form of a legislative enactment but in terms of the controversy involved, and conditioned by the formal issues of the proceeding as framed by the pleadings and otherwise. The decision gives us law, but it is law of a peculiar earthiness which follows the configurations of the case before the court.

III

About the climactic process of making judicial decisions as above outlined there is something intriguing for those of us not technically of the legal profession but nevertheless concerned with the making of intellectual syntheses in this and other fields. We

know that there are many modes of achieving such syntheses, some of them stemming from careful design and others from the invoking of accident or of laws beyond our ken, from surrender to the unknown workings of the unconscious. Some syntheses are the product of grueling and perhaps uninspired labor, others of alternating periods of work and relaxation. Some arrive to the accompaniment of the scrape of a razor, and others amid or after restful sleep. We know that results are in part the product of self conditioning. For example, if we learn to work effectively in a particular room and amid particular conditions, we may find it unrewarding to try to work elsewhere.

So it is that, even without the proof supplied by centuries of judicial experience, we can comprehend the fact that the judicial mind can be trained to do its best work amid the competitive and yet disciplined proceedings of the court room. It seems entirely plausible that judges might learn most effectively to grasp the facts and law of particular controversies and arrive at "right" decisions amid the heated clash of argument between opposing counsel, and that the imprint on the mind made at the time of the argument should carry over to the task of writing opinions at some later date. Although the sublimation of war to the death down to the level of precisely controlled verbal clash between dapperly dressed counsel may seem to import methodology into the present from the depths of antiquity, we are familiar with parallels in other fields. The court room trappings suggesting superior dignity and aloofness and righteousness on the part of enrobed judges may invite atheistic disapproval, but here again we have ample parallels in other fields, so that complete alienness can hardly be claimed. Furthermore, for all the periodic

denunciation of judge-made law and government by judiciary, we are aware of the fact that no two cases are ever exactly alike and that judicial decisions based on precedents must inevitably make such law as is required to fill the gap between the old and the new, between the previously decided case and the case now at hand. Here again judicial experience has ample parallels in the unfolding of experience in other fields.

Indeed, once we have come to accept judicial institutions for what they are in their own terms, those of us who are concerned about the relations of these institutions to other institutions of American government are apt to raise most of our questions about the judicial process in terms of its changing areas, where there are growing resemblances between it and other processes of government, with tendencies toward modification of the adversary proceeding as known to our legal tradition. We find that changes are taking place in the process of proving the facts upon which decisions are to be based. We find in the Supreme Court a measure of confusion of adversaries through admission of counsel or on briefs of additional parties as "friends of the Court." And we note particularly as to the Supreme Court that the very process of creating multiple-judge appellate courts with jurisdictionprimarily over questions of law tends to dilute or move away from the adversary proceeding as practiced in courts of original jurisdiction.

For the finding of facts, our traditional method has been to do so by examining and cross examining witnesses who are sworn to tell the whole truth and nothing but the truth -- and who often leave the witness stand with a sense of guilt because the interests and strateg of opposing counsel have made it impossible for them to tell the whol

truth or the truth without distortion. This process, along with the use of sworn written testimony in some kinds of cases, still provides our basic method. But changes are taking place in that in some jurisdictions we are now invoking scientific tests of breath and blood, and lie-detector tests, with confusion in the law as to the extent of admissibility of new forms of evidence. We are vaguely aware that some form of narcoanalysis may in the near future become a much more accurate mode of getting truth from witnesses, whatever may be the constitutionality of its use, and our courts are yielding gradually to the presentation of a measure of expert opinion which from the layman would be rejected as mere hearsay.[16] Outside the area of the trial itself, in the field of sentencing and clemency, most facts are determined by means other than the formal adversary proceeding, with full judicial approval. A great deal that goes on in these areas requires careful observation.

As for the problem of parties in cases reaching the Supreme Court, many of these cases involve public considerations so vast as to dwarf the interests of the formal litigants. If in such cases the decision is to be the product of the clash of arguments between opposing parties, the minds of the judges may be most inadequately informed about the public issues as distinguished from the private issues involved. It cannot always be assumed -- as Charles A. Beard once wryly phrased an assumption of free enterprise -- that the maximum of selfishness produces a maximum of public good. Instead the public good may go by default while the immediate interests of one of the two contending litigants are served.[17]

The public interest, it is true, and other interests not directly involved in the litigation, can sometimes be protected through

intervention by so-called "friends of the Court." The practice is one of long standing. The Solicitor General may be asked to interver in Supreme Court cases on the part of the government, or he may intervene on his own initiative, although the reins are held tightly and he may be denied the privilege of participating in oral argument.[18] The American Civil Liberties Union files briefs in many cases in its field. So do labor unions. The National Association for the Advancement of Colored People virtually supplants the nominal litigants in the handling of key cases involving race issues.[19] The American Newspaper Publishers Association rushes to the defense of the freedom of the press.[20]

The vital question is as to how far the Court and the government should go in permitting the intervention of additional parties. In 1949 the huge number of propagandist interventions in cases involving communist activities led the Supreme Court to restrict the scope of intervention, or rather, led the Court to remind the Solicitor General that briefs as friends of the Court could be filed only with consent. For a time thereafter that official virtually closed the door on intervention in government cases,[21] whereafter members of the Court persuaded him to reopen it slightly, and the Court reserved to itself also a measure of discretion.[22] The important item here is evidence of disagreement on the Court as revealed in a protest by Justice Black against restriction on briefs by persons not actual litigants. "Most of the cases before this Court," he wrote, " involve matters that affect far more people than the immediate record parties. I think the public interest and judicial administration would be better served by relaxing rather than tightening the rule against <u>amicus curiae</u> briefs."[23]

For this discussion the significant point here is that to the extent to which the briefs of non-litigants are received, and particularly that participation in oral arguments is permitted, cases drift away from adversary proceedings in the traditional sense and become three-cornered or acquire more corners than three, and to take on some of the characteristics of committees and legislative bodies rather than of courts. Indeed, when judges participate as widely in the discussion of the cases as they sometimes do, and when multiple briefs are received or arguments permitted, the judges and counsel tend to merge in committee, though of course with decision in the hands of only the judicial portion of the committee. If committee discussions are to be the source not merely of particular decisions but also of the law of the future, it becomes a matter of concern whether the effective agency should be a committee in court or a committee of the legislature, or a legislature itself.

The matter is even more complicated than this. As they have been permitted to reduce the Court's docket to the cases deemed most important and have been provided with professional assistance, members of the Supreme Court have been able to do extensive additional research into legal materials and adjacent factual background to supplement the briefs of counsel. Counsel in the famous Myers case, for instance, decided in 1926, expressed amazement that Chief Justice Taft had been able to find much relevant material not discovered by counsel.[25] It has been said of Justice Brandeis, originator of the "Brandeis brief," that even when briefs were not inadequate, he "treated them only as a starting-point for investigation."[26] Other justices similarly range widely in the search for material.

That being true, we are left with the question as to the extent to which the adversary proceeding either is or ought to be the source of the specific decision and also of the frontier statement of the law. Is the ritual of argument before the Court one of shadow-boxing, as well as sometimes in the nature of the meeting of a committee? Would putting blinders on the Court by holding it to briefs and public arguments of actual litigants as the sources of decision be desirable in that it preserved the integrity of the adversary proceeding, or would it be disadvantageous in that it protected a proceeding no longer adequate to our needs where public as distinguished from private interests are concerned? On the other hand, if we must convert judges into members of committees composed of judges and counsel and into searchers and supervisors of research, are we distorting a traditional institution to perform a function that might better be performed by the legislature? These are legitimate and important questions for political scientists and for citizens generally.

Part of our difficulty in dealing with such matters lies in the fact that, however sharp and clear may be the posing of adversaries in courts of original jurisdiction where the facts as well as the law are to be determined, in appellate courts, which decide primarily questions of law, the adversary character of the proceeding sometimes seems to dissipate and the adversaries themselves at times seem virtually to disappear. To illustrate by a single case with which many of our profession are familiar, that of Adamson v. California[27] decided in 1947, the Supreme Court there pretty much lost sight not only of the widow with a penchant for public display of jewelry who had gotten herself murdered but also of the defendant, a Negro with

the quaint name of Admiral Dewey Adamson, who had a highly efflorescent criminal record and hobbies which included collection of the tops of women's stockings.[28] Here the Supreme Court as a whole was primarily concerned with whether the Fourteenth Amendment gave protection against self incrimination in a state court. Beyond that point, Justices Black and Frankfurter used the case as a medium for waging a doctrinaire battle over the extent to which the Bill of Rights was applicable to the states and over the merits of natural law reasoning, with Justice Black wielding a collection of historical materials to make his point, much after the fashion of assembling strictly legal materials in such a way as to contribute to a previously selected legal conclusion.[29] Although the case provided the occasion for elaboration of a judicial controversy which had been in ferment for some time, there is no reason for thinking that the justices, in this case as in many others, got much help for their intellectual product from the connection with the defendant under the death sentence.

IV

It is well here to reemphasize the point made in the beginning, that political scientists should study the Court in terms of its basic institutional pattern and reappraise from time to time its relation to the other branches of our government. In doing so we must realize that the "moment of truth" to be achieved by a group of nine men may come very differently and with far more difficulty than when it must come only to one judge sitting alone. Among the nine appellate judges, one may get his illumination primarily from the oral argument, another from the briefs, another from the discussion

in conference, another from independent research, and still another from conversation with his law clerk or gossip with his secretary. But if perchance each has received from some source his own individual illumination, there remains the task of getting the synthesis, the gestalt, the totality of intellectual creation on the part of the group as a whole. Much more than it represents the individual judge sitting alone in the court of original jurisdiction, the appellate Court of nine may resemble the committee structure wherein men talk and talk, from diverse angles, until finally light dawns in the mind of a possibly self appointed spokesman and he launches forth with a statement acceptable to a majority of the group. It may be a long, long route from the arguments of opposing counsel to the synthesis finally achieved.

Does the decision remain nevertheless the product of the adversary proceeding? If it is so denominated, we must still remember that resemblance of the modified adversary proceeding to a parliamentary proceeding raises questions whether the law made through the decision should not more properly be made by an overtly legislative body, or even by a constituent assembly. For all the fact that it decides cases as cases, it is also notorious that the Court makes and announces public policy. The policy may be good or bad -- that for the moment, though for the moment only, may be treated as an irrelevant matter. Take the policy, adopted in various degrees by various justices, of giving special protection to civil liberties. With the insight of a poet, Robert Frost has noted that to the extent of its support of such a policy the Court ceases to serve as a referee and becomes a handicapper. "No referee, no umpire, has a right to be a handicapper. He has no right to say the underdog needs

a little help."[30] Responsibility for special protection, whether for the upper dog or the underdog, he contends, is for the handicapper, and belongs not to the Court but to Congress and the President.

At this point we are compelled to mingle with the discussion of institutions some appraisal of the kinds of policy being made by the judiciary on the one hand and by the other branches of the government on the other. In our governmental system a court operates within a safety zone only so long as it adheres to its rightful sphere of operations, the decision of cases and the incidental -- clearly incidental -- making of interstitial law. When, in the language of Mr. Frost, it takes sides and becomes a handicapper rather than a referee, it invites the public wrath poured out on some such occasions. If it becomes sufficiently partisan it destroys the prestige from which derives its judicial potency and jeopardizes itself as a court as well as a policy-making agency.

On the other hand, it is likewise true that in a democracy no institution exists merely to fulfill its own destiny, whether as a court, or a legislature, or an executive. It exists only to serve the people, doing so to the fullest extent possible under the Constitution and laws. The ultimate ends of society are more important than the pattern of any institution, and it is essential that those ends be served, even though the service is rendered only with considerable "play at the joints" among the several branches and instruments of the government. One of the major ends of our society is the maintenance of a regime of liberty as far-reaching as can be maintained without incurring the penalties of internal disorder or external danger. So it is that if in recent years the Supreme Court has gone to the outer fringes of judicial authority for the

preservation of liberty, we should appraise its performance not merel in terms of an idealized conception of a court but also in terms of the performances of the other branches of the government in the same field. Nature abhors a vacuum. We need to ask what degree of idealistic leadership has been provided by Congress in this area. What, to take a single example, did the Senate do about Senator McCarthy, except censure him for violating the rules of the club -- and doing even that only after he had been publicly discredited anyway? As for the executive branch, where and to what extent, to take a single issue, has it taken the lead in defending broadly the rights jeopardized by race prejudice, instead of waiting for the application of judicial pressure? Wherein during the last quarter of a century has it provided effective leadership for public opinion for the reshapin of benighted attitudes? And wherein, to shift to still other areas of responsibility, have we seen an invitation to greatness either in state legislatures or among our governors?

Answers to these questions may well explain such judicial encroachment as may seem to exist. True, the salvation of democracy does not lie in having a judiciary protect us against ourselves. In a democracy the democrats must either rule or forfeit their birthright, and democracy implies leadership as well as slavish surrender of putative leaders to mass sentiment. The legislative and executive branches yield too much to the pressures of the hour, to the polls professionally or individually taken, to the beckonings of expediency, and seek too seldom within their own modes of operation the "moment of truth" that comes from the concentration of the capacity for thought and leadership on the part of elected representatives. While courts need watching, with praise and blame as the

situation may require and in any event with penetrating and illuminating analysis, the tendency toward default of creative leadership i more glaringly apparent in the other two branches, with consequent invitation to judicial encroachment to fill the vacuum. There are obvious limitations on the rightful scope of the adversary proceedi as a device for achieving syntheses in the field of public policy, a distinguished from the mere decision of cases. But comparison of Supreme Court performance in recent years with that of legislative and executive branches, both in the federal government and in the states, invites drastic refurbishing within the political branches rather than extensive curbing of the power of the courts. Better understanding of the inherent nature of the judicial process, coupled with courageous assertion of democratic leadership where such leadership belongs, may well provide all that is needed in the way of limitation on the scope of judicial power.

Footnotes

1. See Max Radin, "The Permanent Problems of the Law," Cornell Law Quarterly, Vol. 15 (Dec., 1929), p. 6.

2. See Charles P. Curtis, Its Your Law (1954), pp. 1-41.

3. Lon L. Fuller and John D. Randall, "Professional Responsibility: Report of the Joint Conference," American Bar Association Journal, Vol. 44 (Dec., 1958), p. 1159.

4. Theodore F. T. Plucknett, A Concise History of the Common Law (5th ed.), 1956), p. 117; Curtis, op. cit., pp. 2-3.

5. Malcolm v. Bayard, 1 Johnson (N.Y.) 453, 471 (1806).

6. Dupont v. Vance, 19 Howard (U.S.) 162, 175 (1857).

7. See Rule 34, Rules of Civil Procedure, 82 L. ed. 1588.

8. Hickman v. Taylor, 329 U.S. 495, 516 (1947).

9. W. Calvin Chesnut, Sixty Years in the Courts (1947), p. 65.

10. Felix Frankfurter, "Personal Ambitions of Judges: Should a Judge 'Think Beyond the Judicial'?" American Bar Association Journal, Vol. 34 (Aug., 1948), p. 747.

11. Frederick Bernays Wiener, Effective Appellate Advocacy (1950), p. 228.(Italics supplied.)

12. Id., p. 236.

13. Curtis, op. cit., p. 2.

14. Piero Calamandrei, Procedure and Democracy (1956), p. 37.

15. See M. P. Follett, Creative Experience (1924), pp. 91-116; Wolfgang Kohler, Gestalt Psychology (1947).

16. See Bernard Botein, "The Future of the Judicial Process: Challenge and Response," The Record of the Association of the Bar of the City of New York, Vol. 15 (April, 1960), 152-173; Manfred S. Guttmacher, The Mind of the Murderer (1960), pp. 109-226.

17. See Benjamin R. Twiss, Lawyers and the Constitution (1942).

18. See United New York & New Jersey Sandy Hook Pilots Association v. Halecki, 358 U.S. 803 (1958).

19. See "Private Attorneys-General: Group Action in the Fight for Civil Liberties," Yale Law Journal, Vol. 58 (March, 1949), pp. 574-598.

20. See Craig v. Harney, 331 U.S. 367 (1947).

21. Clement E. Vose, "Litigation as a Form of Group Activity," Annals of the American Academy of Political and Social Science, Vol. 319 (Sept., 1958), pp. 29-30.

22. Rules of the Supreme Court of the United States, 346 U.S. 993-994 (1954).

23. Order Adopting Revised Rules of the Supreme Court of the United States, 346 U.S. 945, 947 (1954).

24. Myers v. United States, 272 U.S. 52 (1926).

25. James M. Beck to William Howard Taft, Oct. 28, 1926, Taft Paper.

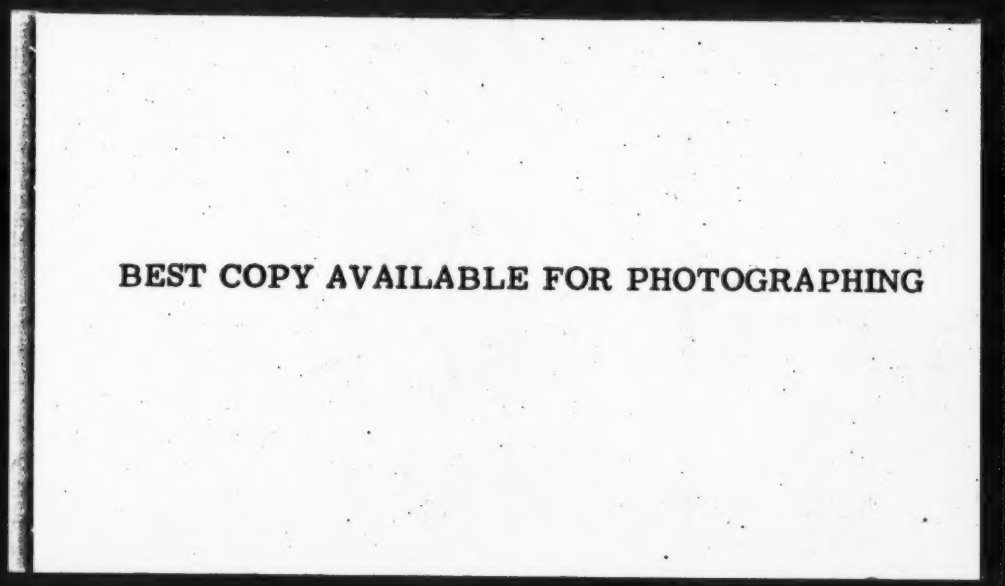
26. Paul A. Freund, "Introduction," Alexander M. Bickel, The Unpublished Opinions of Mr. Justice Brandeis (1957), p. xvii.

27. Adamson v. California, 332 U.S. 46 (1947).

28. For details see the case in the California supreme court, People v. Adamson, 165 P. (2d) 3 (1946).

29. For discussion of Justice Black's historical performance see Charles Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?", Stanford Law Review, Vol. 2 (Dec., 1949), pp. 5-139.

30. From a recording of a speech by Robert Frost, delivered at the Johns Hopkins University Poetry Festival, Nov. 13, 1958.


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NATIONAL STRATEGY AND MILITARY TECHNOLOGY: TOWARDS THE REFORMULATION OF THE PROBLEMS OF CIVIL-MILITARY RELATIONS

By David W. Tarr
Legislative Reference Service, Library of Congress

Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960.

The traditional approach of American scholars to the subject of civil-military relations is marked by an extraordinary concern for the inherent dangers to liberal and democratic government which exists in the organization and employment of military power. Unfortunately most scholarly attention has been directed to the wrong sets of problems. They are wrong, in the sense of being misdirected, because the underlying assumptions concerning the military forces of a state have been drawn from European[1] rather than American experience and they persist because of a deep-seated anti-militarist bias which tends to reject military power as a fully legitimate aspect of a democratic political system.

The shibboleths which abound today in lay and professional discussions of civil-military relations identify fairly remote dangers to our democracy as the central issues: they warn of the erosion of civilian control of the military;[2] they caution against the growing influence of the military in public affairs; they foresee the rise of a militaristic society in the midst of what are considered heavy armament programs. Within this traditional framework of civil-military relations one is likely to ask if the military enjoy an unduly prominent role in the political processes of our society, if the role of force is perhaps over-emphasized by the military, if the civil authorities are actually in control--in short, if the military profession and military considerations are becoming so influential that either democratic values or prudent national policies (or both) are in jeopardy.

These questions are appropriate ones if the dangers of militarism are real, but I would argue that the traditional approach grossly overestimates the possibility of misuse of

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1 That is, from societies with an aristocratic heritage, separate military castes, and authoritarian traditions.

2 "The military" is used throughout in reference to the professional officer corps and the armed forces under its command.

military power in this country. Exaggeration of the problem of incipient militarism leads one to neglect other aspects of civil-military relations which are much more important to the security of the nation. In the discussion which follows an attempt is made to place the subject of civil-military relations within the perspective of modern warfare. Although military power is widely recognized as an instrument of policy, the revolution in military technology which we are now experiencing and the strategic imperatives which have arisen as a consequence of this revolution have made the political utility of the military resources at our command immensely difficult to comprehend and apply. Inadequate civil-military relations in crucial areas of the policy formulating process and, more importantly, a failure to recognize the significant problems can produce policies and the military instruments which are presumed to support them which are totally inappropriate to each other. Attention is directed here to the problem of relating political objectives to the military means upon which the attainment of these goals depends.

I. The Question of Civilian Control

As a consequence of the stark military vulnerability which now confronts the United States there is widespread if sometimes uneasy awareness of the necessity of a large and permanent military establishment as well as the collaboration of civilian and military officials in the highest councils of government. Both the existence of a persistent external threat to American security and of a pronounced domestic program of military preparedness are unprecedented factors in American peacetime politics. The expanded influence of military factors in the politics and economy of the United States have persuaded some observers, as Harold Lasswell concluded some years ago, that continued international danger and domestic military preparations may give the "specialists of violence" a dominant political role which might ultimately transform a democratic system into a militarized or "garrison state."[3] For the most part the necessity for military preparation is unquestioned--although there are significant disagreements as to the character and volume of our defense program. But if one assumes that when such processes are continued indefinitely they

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[3] See the following works by Harold B. Lasswell: "Sino-Japanese Crisis: The Garrison State versus the Civilian State," China Quarterly, XI (1937), 643-49; "The Garrison State," The American Journal of Sociology, XLVI (January, 1941), 455-68; and National Security and Individual Freedom, New York: McGraw-Hill, 1950.

will lead to a militarized society, one is inevitably faced with the uncomfortable alternatives of either "national destruction or militarization."[4]

However, most observers agree that under normal conditions military preparations are compatible with democratic processes as long as the military are kept subordinate to civil authorities. In the United States the subject of civil-military relations is almost invariably centered on the problem of civilian control.[5] Although there have been few significant challenges to the principle of civilian supremacy, concern over the adequacy of the instruments of control endures.

It is often assumed that the principle of civilian control is a basic tenet of the Constitution. This is not quite correct. The framers of the Constitution were aware of the potential threat which a standing army might have upon the rights and freedoms of the people. Therefore the defense of the nation was vested in citizen militias which were non-professional part-time armies. The militia system reflected not only a distrust of a separate military class but of central authority as well, for the militias were essentially under the control of the several states.[6]

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4 Quincy Wright posed this problem in 1947. He hoped that it might be solved if the world order were modified so that states could "...rely upon law rather than their own forces for security." See Quincy Wright, "The Military and Foreign Policy," in Civil Military Relationships in American Life (Jerome G. Kerwin, ed.), Chicago: University of Chicago Press, 1948, p. 132.

5 Civilian control is normally defined as military responsiveness to the policies and obedience to the directives of the politically responsible civilian leaders of government.

6 Samuel P. Huntington calls this an arrangement in which the military was "subjectively" controlled by making it a civilian institution reflecting "...the same interests, values, and outlook as the political leadership of society." See "Civilian Control and the Constitution," American Political Science Review, L (September, 1956), 677. For an elaboration of the distinction between "subjective" and "objective" control see Huntington, "Civilian Control of the Military: A Theoretical Statement," in Heinz Eulau, Samuel J. Eldersveld, and Morris Janowitz, (eds.), Political Behavior: A Reader in Theory and Method, Glencoe, Ill., The Free Press, 1956, pp. 379-85; as well as Huntington's more recent The Soldier and the State, Cambridge, Mass., Harvard University Press, 1957.

There are only two Constitutional provisions for the control of the military. One made the President Commander-in-Chief of the armed forces, and the other handed the purse strings to Congress. These provisions did not, in themselves, clearly establish the principle of civilian supremacy, although that was their intent. In fact, the separation of military controls between the executive and the legislature provided the armed forces with a significant leverage in the policy process.[7] Civilian control has developed, nevertheless, as a firmly established political principle. The Constitution provided the bare outlines and these were elaborated by a people who suspected and distrusted military power.

Later in the nineteenth century the character of the armed forces changed as a result of the development of a professional officer corps and a national army, but it is probably incorrect to assume that the subjective controls of the militia system became obsolete as a result of these changes.[8] Although the point has yet to be thoroughly researched,[9] it is apparent that the officer corps never developed as a separate military caste in America, but continued as the militia had done to reflect the general political and social values of the society from which they were drawn.

The military were subjected, not to isolation during this period, but to neglect, neglect that was a consequence of the minor role that the armed forces played in the formative years of this nation. Soldiers were used to protect pioneers from Indians and were employed to impose law and order in the western territories. During our wars the armed forces were expanded, taking on again the character of the militia. At the termination of each conflict the armed forces reverted to their traditionally minor position in American government.

In the twentieth century the military establishment has undergone tremendous changes in size, complexity, weapons, and strategies. The military profession is now intimately involved in national policy processes. But these are not alarming departures. Previously the military played a minor role in the national affairs of a country that was not yet ready to assert itself on the international scene. The expanded influence of the military

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7 Huntington makes this point in "Civilian Control and the Constitution," op. cit., pp. 676-99.

8 For another point of view see Huntington, Ibid.

9 A good beginning has been made by Morris Janowitz, The Professional Soldier, Glencoe, Ill., The Free Press, 1960; See also comments by Roger Hilsman, [Review article on civil-military relations] American Political Science Review, LI (December, 1957), 1091-84.

is but a reflection of the new role of the United States in international affairs as well as the impact of military technology on war itself.

The military remains in accord with the basic values of our society. One looks in vain for fundamental disagreements between the professional soldier and the rest of society with respect to the written and unwritten rules--the general political consensus--of our society. The armed forces have never, for example, been used as an instrument for gaining political office in the United States even though several of our Presidents have been military heros.[10] On the contrary, being a professional military officer has been a distinct handicap in gaining public office by election.[11] Moreover, there is not the slightest evidence that the military has had an influential voice in determining when and under what circumstances the armed forces would be used to quell domestic disorders. When troops were sent to Little Rock, for example, it was not as a consequence of military policy nor was it the type of contingency for which the armed forces are normally prepared. Finally, there is little indication of pronounced class or regional identification among the officers of the armed services. The military profession is a fair representation of the major strata of American society.[12]

The principle of civilian supremacy remains intact even though the armed forces have greatly expanded. But the military are subordinate to civil authority not merely in deference to certain constitutional stipulations, nor even because the administrative hierarchy of the Department of Defense imposes a layer of civilian superiors upon the services, but fundamentally because the military itself accepts as a matter of long-standing and self-perpetuating tradition the doctrine of civil supremacy and the public expects this tradition to be vigilantly maintained.[13]

Yet America is a vigorously pluralistic society and the struggle for power and influence among the various political groupings is a major fact of political life. Because the military endorses the concept of civilian control does not mean that it abstains from the pluralist contest for political influence, nor does it mean that when issues are in contention the military will line up on one side and the civilians on the other. Each of the armed services and

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10 See Roger Hilsman, "Research in Military Affairs," World Politics, VII (April, 1955), pp. 490-503.
11 Janowitz, pp. 388-89.
12 Ibid., Chapter 5, "Social Origins."
13 See Roger Hilsman, "The Military in America," Worldview, August, 1958, pp. 4-6.

branches within each service seek to influence military programs and strategies. But in doing so each has on occasion met opposition from rival services, other government agencies, a variety of citizens groups, and spokesmen for industries favoring competitive systems. With each issue coalitions of power develop to fight for the acceptance, modification, or rejection of certain programs.[14] These coalitions cross civilian, military, and party lines. The involvement of the military makes the essential process no different, nor does it make it insidious.

The major and crudest instrument of civilian control is exercised through the budget process. Here there can be no question about civilian dominance. Recall, for example, the defense budget of fiscal year 1950 (during the tenure of Louis Johnson) when President Truman bluntly stated that a fifteen billion dollar military budget was all that the nation could afford. The original estimate of military needs by the armed services totalled about thirty billion dollars. The Joint Chiefs of Staff were asked to reduce the figure, which they did, reaching an agreed amount of slightly over twenty-three billion dollars. But President Truman insisted upon a fifteen billion dollar ceiling. The Joint Chiefs were required to labor again and this time produced a "rock bottom" budget of seventeen and one-half billion. Yet the military leaders were finally forced to accept the limit set by the President.[15]

This situation recurred during the Eisenhower administration in the guise of the military "new look." Here again the armed services were required to fit the military budget within restrictive ceilings which forced large manpower cuts, especially in the Army, and resulted in a rather precarious reliance upon the retaliatory power of the Air Force. Both the strategy of "massive retaliation" and the budget ceiling approach to defense planning have been seriously questioned by many high-ranking military officers and adamantly opposed by the Army. Yet the military acquiesced and the stringent budgets prevailed.

In fact, the formulation of the defense budget, which is central to the policy process in that it translates political decisions

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14 See Samuel P. Huntington, "Strategic Planning and the Political Process," Foreign Affairs, XXXVIII (January, 1960), 285-99; Roger Hilsman, "The Foreign Policy Consensus: an Interim Research Report," Conflict Resolution, III (December, 1959) pp. 361-82.

15 See a concise summary of this process in a speech delivered by Congressman Carl Vinson, Congressional Record, 81st Cong., 1st Sess., March 30, 1949, pp. 3540-44.

into dollar allocations, is an area of policy in which the military has had astoundingly little influence. The restrictive budgets of the past fifteen years (excluding the Korean war period) have come about despite the general opposition of the military leadership. Civilians have used the budget process as a major negative check upon the military, forcing each service to live within strictly limited means. But these decisions have had an important impact upon defense strategies and capabilities even though the major motivation has been economy rather than positive military policy. This is exemplified in the slogan "more bang for a buck." [16]

Of course, the military has not always accepted civilian decisions docilely. Military officers will express disagreement with civil authorities on occasion, especially in testimony before Congressional committees where the requirement that they provide Congress candid professional military advice comes in conflict with their obligation to obey their civilian superiors. Caught in the middle of the policy process they are often less outspoken in uniform than after retirement.[17] But there can be no question of civilian control over these matters. The armed services may fight policies that threaten their own interests, but it is the civilian leadership which ultimately prevails.

The issue, then, is not civilian control, per se, because the civilians are in unquestioned command. But both the civilians and the military are involved in a policy process in which it is presumed that they develop military strategies and capabilities which will implement national policies. Yet it is not clear that adequate attention is devoted to the problem of relating means to ends.

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16 The Bureau of the Budget is reputed to have a great impact on strategy and military capabilities in the negative sense of forcing the abandonment of "nonessential" programs, the alteration of force levels, and repeated delays in the development of weapons systems. The Bureau is even reported to have initiated a proposal for severe reduction in troop levels in Europe in order to alleviate the balance of payments problem. In strategic terms it had written off the contingency of limited war in Europe and had found the "trip-wire" strategy most economic. See Edward L. Katzenbach, "Bubud's Defense Policy," The Reporter, June 23, 1960, pp. 25-30; and Chalmers M. Roberts, "Dollar Defense," The Washington Post, April 4, 1960, p. A-19.

17 See the harsh criticism of the "new look" by three Army officers who have left the service: Matthew B. Ridgway, Soldier, New York: Harper & Bros.; James M. Gavin, War and Peace in the Space Age, New York, Harper & Bros., 1958; and Maxwell D. Taylor, The Uncertain Trumpet, New York, Harper & Bros., 1959.

In order to appreciate the problems involved in attempting to transform military power into meaningful and useful instruments of policy we must examine the nature of the revolution in military technology as well as the strategic imperatives which this nation now encounters.

II. Revolution in Technology

During most of the history of mankind warfare has changed in character very slowly, following--sometimes with considerable lag--the course of technology as it was translated into military applications. We are all well aware that the tempo of technological development quickened in the nineteenth and twentieth centuries. But today we are experiencing a fantastic leap in technological capabilities, a virtual revolution in the fields of nuclear energy, electronics, and rockets, which is so fundamentally different from past experiences that traditional military and political doctrines have been thrown into disarray. Both the internal relations between political authorities and military specialists and the external relations between nations have been revolutionized. Man's capacity to use violent means has expanded so rapidly that the existence of whole nations is now in jeopardy. Unfortunately there seems to be no assurance that the new technological horrors in the hands of mankind can be limited or controlled within the existing international political framework.

One of the most startling developments in recent military technology is the decline of the nation's capacity to defend itself against strategic weapons. Once, as Bernard Brodie has observed, armies were able to "interpose themselves between the enemy and the homeland." [18] This is no longer possible unless the enemy is willing to pit its army against ours and withhold its strategic weapons. Even when the major weapon of strategic attack was the long-range bomber an air defense system was possible. There were both warning time and means of defense. But now the new technological capabilities of nuclear-tipped intercontinental ballistic missiles give the enemy the advantage of almost complete surprise and deprive us of a means of defense. These weapons can only be deterred by the creation of a counter-threat that is relatively invulnerable. There is no defense and little hope that we can expect to develop one for some time to come. Thus our military strategy has been dramatically transformed by "...<u>the loss of the defensive function as an inherent capability of our major offensive forces</u>." [19]

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18 Bernard Brodie, <u>Strategy in the Missile Age</u>. Princeton, N.J.: Princeton University Press, 1959, p. 225.

19 <u>Ibid</u>., underlining is Brodie's.

In other words our military strategy has been transformed by technology from one of defense to one of deterrence.

The revolution in military technology not only deprives us of an inherent defense in our offensive weapons it also deprives us of what was formerly our greatest asset upon the outbreak of war--a tremendous industrial potential. Under present circumstances an attack upon the United States by the Soviet Union will have to be met by the forces and products in being. Mobilization of a devastated economy will be hopeless. We are faced with the military imperative of perpetual readiness for war.

There can be little doubt that the era of nuclear ballistic missiles is not the end-product of our present technological thrust (unless we destroy ourselves with them) but just the beginning. Already space research is heralding new political and military battlefields for the nations of the world. Space satellites and space gliders are now under development which have distinctly military functions. Military technology as presently constituted requires a gigantic national enterprise of specialists and technicians in or out of uniform. It requires, as well, political directions and control.

Under these circumstances it would be unrealistic to exclude the military from the policy-making arena and it would be unfair to conclude that the new prominence of the military in our national affairs is an indication of the growing militarization of our society. In fact there is every indication that the complex machinery of warfare and the tremendous emphasis now placed on research, development, and technical maintenance "...tend to weaken the organizational boundary between the military and the nonmilitary, since the maintenance and manning of new weapons require a greater reliance on civilian oriented technicians."[20] One of the major consequences of industrial and technological change has been an organizational and managerial reformulation of all major private and public enterprises so that the skills, techniques, and direction of both civilian and military bureaucracies have become quite like each other. This is not to say that nonmilitary organizations have become like the military ones, but that both types have moved from old patterns of organization and management to new ones. From one set of assumptions these patterns may appear to be "militaristic." Through another set one sees the emergence of the "organization man," or "bureaucratization."

Whatever one's view it is obvious that the preservation of democratic values will become more difficult the more that social

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20 Morris Janowitz, Sociology and the Military Establishment, New York: Russell Sage Foundation, 1959, p. 17.

organizations, of whatever kind, are enlarged and bureaucratized. In this respect our contemporary military organizations are not unique. In fact, if trends are to be discerned, it appears that the military is becoming more and more civilian in method and outlook as military interdependence with civilian society increases.

Those who fear creeping militarism in the United States often mistakenly justify their alarm in the increasing level of military preparations in this country, even though a mere eight to nine percent of the gross national product is devoted to defense, and in the amount of military participation in national affairs. But it is not the level of preparation or the amount of participation that is crucial: it is the outlook of the society, the extent to which attitudes and behavior remain civilian, that is important. Militarism is aptly defined as

> "...a state of mind...[wherein] the purposes for which military forces exist is forgotten. They are thought to stand by their own right and to need no justification. Instead of being regarded as an instrument which is necessary in an imperfect world, they are elevated into an object of superstitious veneration...so that political institutions and social arrangements are crushed into a mold made to fit one activity."

In short, "militarism...is fetich worship." [21]

But we know what the purposes of our military forces are and we have steadfastly refused to make them or any militaristic ideals matters of public veneration. The dangers to our society are from external and not internal sources.

We do, however, face an increased "socialization of danger," [22] as Harold Lasswell has phrased it. The military confrontation of the Soviet Union is real and formidable. One can expect under these conditions to have infringements upon certain liberties, especially by patriotic zealots whose methods are not renowned for their liberality. But it does not follow that socialization of dangers will lead inevitably to a garrison state. We have lived under periods of socialized danger before, the most prolonged being the pioneer days when the threat of Indian attack

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21 R. H. Tawney, The Acquisitive Society, New York: Harcourt, Brace and Howe, 1920, p. 44

22 Lasswell, "The Garrison State," op. cit., p. 459.

made many social groups live in perpetual dangers, dangers which made the musket and pistol familiar household items. Yet our forefathers were liberal and nonmilitarist people.

We might, in fact, turn the argument around. Under present conditions of perpetual international hazards the American citizen appears at times to be only dimly aware of the precarious nature of world events. He remains essentially concerned with personal affairs and does not seem to orient his behavior on the basis of impending dangers. Our democracy faces a momentous task in mobilizing and maintaining sentiment in this country which will support security policies of the national government. As a people we appear to be more concerned with production, consumption, and consumer-oriented leisure, than we do with public necessities and international imperatives.[23] We have proved our ability in past wars to respond to sudden and severe crisis but we do not appear to be able to sustain interest if the crisis persists over a number of years. We desire "normalcy," not militancy.

Our inability to grasp the full significance of the Soviet challenge in space technology indicates the extent to which we have oriented our affairs to the fulfillment of domestic wants. Historians will probably regard the launching of the Edsel motor car in the fall of 1957 as more than a coincidental parallel to the Soviet-launched Sputnik I during the same period, even though the Edsel remained in orbit slightly longer than the Russian satellite.

There can be no doubt of the fact that military needs have in recent times greatly accelerated the pace of the technological revolution. The development of atomic energy, for example, was hastened by the necessities of the Second World War and made possible by the nationally mobilized efforts on behalf of the defense program. A good case can be made for the thesis that the spectacular advances in Soviet science and technology since the war have been a consequence of the all-encompassing concern of the Russians for military security rather than in any inherently superior aspects of economic or social organization. In the particular case of our own space efforts the relative confidence that the United States exhibited after World War II in its own military superiority and invulnerability inhibited the development of large rocket boosters which are so vital to space research. It was the late realization of the military significance of rockets that spurred on our space technology.

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23 See John K. Galbraith, The Affluent Society, Boston: Houghton Mifflin Company, 1958.

But before we conclude that the prominence of the military motive in scientific research is but another indication of incipient militarism in the United States let us recall that this is not an altogether new phenomenon. Military technology greatly interested and motivated Leonardo Da Vinci, for example. Galileo was a professor of military science at Pavia and his telescope was purchased for its significance to naval warfare. Moreover, the theory of gravitation was as much influenced by research on ballistics as it was by falling bodies and swinging pendulums. More recently, Eli Whitney pioneered the interchangeability of parts--a development which spurred the industrial revolution--when he contracted to build ten thousand muskets for the United States government in 1798.[24] The point is not that science owes a great debt to the military. But there can be little doubt that the pace of research and technology among the natural sciences is greatly accelerated during periods of belligerency and crisis.

Today, as a consequence of the revolution in technology, the United States is confronted with a most serious threat to its security. Our opponent has organized his forces in a massive national effort to challenge the political and technological leadership of the United States. In response, this country has committed itself to a policy of global containment of Communist forces, yet it has been reluctant to undertake a military program which can appropriately sustain this ambitious policy.

How, in the face of a truly formidable enemy, is the United States to mobilize its resources in such a way that it is able to meet the threat? How are we to relate our policy commitments to our military needs? How can we make the most potent instrument of national power--our military mechanism--appropriate to the demands of international affairs? Somehow, in the face of the challenges of the second half of the twentieth century, the old and hackneyed issues of civilian control and militarism have lost their meaning. We need not fear a standing army, a man on horseback, or a militarist and militant society. But we must find some way to bind the Prometheus of military technology upon the rock of sound political utility.

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24 These and other examples appear in Waldemar Kaemffert, "War and Technology," The American Journal of Sociology, XLVI (January, 1941), 431-444. See also, Fritz Sternberg, The Military and Industrial Revolution of Our Time, New York: Frederick A. Praeger, 1959; and Robert K. Merton, "Science and Military Technique," Scientific Monthly, XLI (December, 1935), 542-45.

III. National Strategy and Military Power

The formulation and execution of national policies are today enormously complex tasks requiring great organizational skills and the careful orchestration of the nation's resources. Prudent and successful policies will flow only from programs which select attainable goals and develop useful means for their implementation. An understanding of the limits to foreign policy is crucial for we must realize that we cannot achieve all that we desire. The situation of our nation lies somewhere between "the extremes of omnipotence and powerlessness." [25] We cannot accomplish everything, yet we are undoubtedly capable of greater achievements than we are now making.

The most potent and unruly instrument of foreign policy is military power, yet unless military policies are vigilantly intermeshed with foreign policies our political goals may not be in accord with our capabilities. One must make a distinction here between the conglomerate power of a nation's armed forces and the usefulness of those forces. The revolution in military technology has vastly increased the means of violence at the disposal of the United States but the very unlimited nature of megaton nuclear weapons may actually make them less useful under certain circumstances than the traditional foot soldier and rifle. Just as it is crucial to understand that national goals should be adopted within the perspective of limited means, it is also essential for one to realize that modern weapons can be less useful than one might suppose.

The pursuit of our international goals in the face of the powerful and ruthless opposition of the Soviet bloc have so intertwined the political, economic, and military instruments of foreign policy that Hanson Baldwin remarked some years ago that the famous dictum of Clausewitz could be paraphrased as follows: "modern peace is an extension of war by other means." [26] There is great truth in this witticism. The conduct of foreign policy in the face of hostile opposition is very much like the conduct of war. The instruments of violence exist but are withheld. Effective diplomacy under these circumstances requires the proficient and delicate threat of force in the pursuit of vital national objectives. Having lost our power to defend against the strategic weapons of the enemy, we have substituted

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25 Charles Burton Marshall, The Limits of Foreign Policy, New York, Henry Holt and Co., 1954, p. 28.

26 Hanson W. Baldwin, "The Recruitment and Training of the New Armed Forces," in Kerwin, op. cit. p. 42.

the psychology of deterrence. Thus we find the importance and utility of the military threat more significant than ever before. The existence of force must remain as an ultimate sanction, for its indiscriminate use may be self-destructive.

It is this intimate relation between military power and foreign policy which requires us to reformulate the problems of civil-military relations in terms of the strategic imperatives of our time. If effective strategies and the instruments to implement them are to be developed they can only be accomplished within a policy framework in which there is a close working relationship between the specialists of violence--both soldiers and scientists--and the economic and political advisers of our policy makers.

The revolution in technology provides us with fantastically destructive means. How these are to be realistically accommodated to our political objectives is one of the great political challenges of our time. It may be that the United States has set out dangerously ambitious political goals for itself without adopting the military, economic, and political means necessary for their implementation. Ballistic missiles and nuclear weapons are entirely too attractive and simple solutions to the present imbalance between ambitious objectives and limited means. American strategy since 1945 has exhibited a naive complacency in the utility of the ultimate sanction of nuclear war without proper consideration of intermediate capabilities.

The disparity which exists between our policies and our capacity to implement them places the United States in a precarious position. On the one hand, strategies must be developed within the government which are neither inconsistent nor incompatible with national policies. And on the other hand, policies must evolve that are capable of implementation. Both unsophisticated strategies and insupportable policies can be equally disastrous. It is imperative that every effort be made to understand the relations between the objectives we seek and the means we need to attain them.

There has been a growing trend in recent years among political scientists, economists, and military professionals to address themselves to these problems, especially to the question of national strategy.[27] Yet the military profession still tends to view

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27 By national strategy I mean the selection of national goals and the over-all plan, including measures for coordination of the various military and nonmilitary resources of power, for the effective attainment of these goals. Cf. Robert E. Osgood, Limited War, Chicago: University of Chicago Press, 1957, p. 7.

strategic matters as coming within the sphere of its own special professional competence and it sometimes expresses impatience with those outsiders who venture into the field. But military strategy[28] is an essential part of national strategy and must be designed to implement national objectives. It is not a matter for military professionals alone.

Despite the military claim upon strategy, military strategists rarely concern themselves with national strategy. They devote their cerebrations to questions of the techniques of war and how to win them--that is, how to overcome the technical and logistical problems of war and how to turn a combination of tactical battles into a strategic victory. Two Army officers recently observed, rather plaintively, that "strategy, once considered the province of a limited number of military types given to quoting Clausewitz and playing chess, is now a matter for wide public discussion.... Whether desirable or not these are the hard facts."[29] But these facts are not as "hard" as they appear, for no where on the national scene is there enough energy devoted to the difficult task of relating military power to national policy, not even within the armed services themselves. Our military leaders are not independently competent to determine what types and amounts of forces are needed to accomplish our political goals, especially where contradictions arise between national policies and military strategy. Our military leaders are more technicians of warfare than they are strategists.

An example of the division between ends and means in strategic planning occurred well before the Second World War when the United States decided that in the event of war in the Pacific the Philippines were not to be abandoned. As a result, the Army and Navy developed a joint plan, assigned the code name "ORANGE," which was designed to retain the Philippines but which totally ignored the absence of military means to accomplish this objective.[30]

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28 By military strategy I refer to that element of national strategy which deals with the plans designed to utilize military resources in the support of strategic objectives under a variety of military contingencies; in other words, it is the continuous effort to accommodate military force to the requirements of national strategy. Cf. Robert E. Osgood, "NATO: Problems of Security and Collaboration," American Political Science Review, LIV (March, 1960), 106-107, fn. 1.

29 Colonel George A. Lincoln, and Colonel Richard G. Stillwell, "Scholars Debouch into Strategy," Military Review, XL (July, 1960), p. 59.

30 Louis Morton, "War Plan ORANGE; Evolution of a Strategy," World Politics, XI (January, 1959), 221-50.

The remarkable separation between the determination of national policies and the means required to implement them were never more stark.

Today the situation is not as extreme but the problem persists. The United States has committed itself as a matter of basic national strategy to defend western Europe, the Middle East, South and Southeast Asia, and the Far East. It has taken upon itself the task of building a system of strategic deterrence of a major assault by the Soviet Union and it has promised a host of allies that in the event of local aggression the United States will come to their aid. Yet consider the means that we have developed to implement this strategy of global containment and deterrence. Our capabilities may be formidable when compared to our traditional peacetime posture, but they are meager when matched against our policy objectives and against the forces of our potential adversary. Furthermore, the character and deployment of our military forces--which are presently very vulnerable to strategic attack--may not be appropriate to the political tasks for which they are intended.

Presumably the coordination of military and national strategies as well as the integration of all significant aspects of national security policy are made by the National Security Council. The utility of this body will vary with the character of the President. However, it is disturbing to note that there is a widely held consensus among leading civilian and military figures with experience in national security affairs that the existing policy machinery is "...inadequate for the formulation of overall national security policy." [31] Although there is general agreement that the National Security Council serves useful functions, especially as a forum for discussion of overall policies, most critics agree that compromise and vagueness of policy are normal and that the vigorous thinking and planning go on at lower levels, especially in the State and Defense Departments.[32] Yet, if General Maxwell Taylor's charge that "nowhere in the machinery of government is there a procedure for checking military capabilities against political commitments..."[33] is a valid one--and I suspect that it is--then the central problem of civil-military relations is to remedy this glaring deficiency. For the chasm between ends and means can only be breached through policy machinery in which national strategy and the instruments by which it is to be implemented are under constant reconsideration.

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31 Organizing for National Security, Interim Report of the Committee on Government Operations, subcommittee on National Policy Machinery, U.S. Senate, 86th Cong., 2nd Sess., p. 5.

32 Ibid., pp. 4-10.

33 Taylor, p. 83; underlining is author's.

IV. Concluding Remarks

How are these problems to be overcome? Harmonious civil-military relations cannot in themselves resolve the disparity which exists between our policies and our capacity to carry them out. This defect is not fundamentally a function of public administration although it is clear that close integration of political and military planning are essential. If the National Security Council continues blithely to adopt ambitious national objectives and yet endorse restrictive military budgets the gap between national capabilities and goals will continue. We cannot say to the military, in effect: "we must defend the entire free world and we must deter Soviet nuclear attack, but we must not spend more than forty billion dollars in implementing these policies" and expect to close the breach between ends and means.

The first step must be a recognition and an admission that the disjunction between ends and means exists. For this to occur our civilian leadership must understand how little can be accomplished by military force and how difficult it is to accommodate forceful means to the objectives at stake.

Next we must re-examine the problem of accommodating military instruments to political purposes. We must ask ourselves if it is possible to build a military posture which is more useful--not simply larger or smaller--than that which now exists. We must be especially careful to assess the limitations of our weapons systems.

Finally, we must reassess the requirements for a flexible national security system, a system which must be designed to sustain our objectives within the North Atlantic Treaty Organization, and on the Afro-Asian periphery of the Communist bloc. Once we have determined what these requirements are we must find the political courage to go about fulfilling these needs. Inevitably this will mean the end of arbitrary defense budget ceilings and probably result in a substantial increase in expenditures for military hardware and personnel. But if this country is to avoid severe political setbacks and perhaps even military disaster, the political leadership will have to work vigorously at bringing our military means into accord with the policies which depend upon them.

To identify problems is one matter; to resolve them quite another. But one thing we can say: The effectiveness with which we deal with these problems is as much a function of the competence and breadth of experience of the civilian and military leaders who must grapple with them as it is of the organizational structure within which they are met.

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THE COMPARATIVE POLITICS OF MOVEMENT-REGIMES

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Prepared for delivery at the 1960 Annual Meeting of the American Political Science Association, New York, Statler Hilton Hotel September 8-10, 1960

Those who specialize in the study of Soviet government and politics are beginning to feel and acknowledge the need for a more effective theoretical apparatus. The post-war years of expanded research in this field have been fruitful in empirical studies of Soviet political history and institutions, but the theoretical development has not kept pace; and now the lag is beginning to inhibit the further fruitful progress of empirical research itself. Instead of a gradually developing body of theory, we still have a mélange of "ten theories in search of reality," as Daniel Bell has aptly summed it up in the title of a recent article.[1]

The purpose of the present paper is not to propound an eleventh theory. It is more in the nature of an exploratory effort, a consideration of a somewhat different approach to the problem than has been customary in the field of Soviet studies. In outlining this approach, I shall try to shed the blinkers of a Russian specialist and take a look at the whole political galaxy in which Russia is only the biggest star and probably no longer the brightest one.

The best way out of the theoretical difficulty may lie in making the study of Soviet government and politics more comparative than it has generally been so far, thus bringing it into much closer working relations with political science as a whole and particularly with the slowly growing body

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[1] "Ten Theories in Search of Reality: The Prediction of Soviet Behavior in the Social Sciences," World Politics (April 1958). The article is reprinted in A. Dallin, ed., Soviet Conduct in World Affairs, and will be quoted from this source.

of theory in comparative politics.[2] As this statement implies, our work on Soviet government and politics has been characterized by a certain theoretical isolationism. The underlying assumption of a great deal of it is that Soviet politics constitutes a unique subject-matter, a political world apart that can only be understood in terms of its own queer if not inimitable laws or motivations. Among the ten approaches surveyed by Bell we encounter, for example, "diaperology," or the view that Soviet politics is what it is largely because the leading participants may have been swaddled in babyhood. Another illustration is the theory of Nathan Leites, who finds at the bottom of Bolshevism and all its works "a reaction-formation to fears of death and latent homosexual impulses."[3]

It would not be accurate, however, to say that no one has studied the Soviet political system in a comparative political way. Indeed, much of the work done on this subject in the past fifteen years or so has been built around a kind of comparative concept -- "totalitarianism." This term, it may be noted, was not originated by political scientists, but by totalitarians. It appears to have been put into currency by Mussolini or members of his circle. Mussolini, in particular, wrote the following in his article on the doctrine of fascism in the Enciclopedia Italiana in 1932: "The Fascist conception of the State is all-embracing; outside of it no human or spiritual values may exist, much less have any value. Thus understood, Fascism is totalitarian and the Fascist State, as a synthesis and a unit which includes all values, interprets, develops and lends additional power to the whole life of a people."[4]

Beginning in the late 1930's, Western students of dictatorship began to use and extend the range of this misty term "totalitarian." The phenomenon of the totalitarian or all-embracing state was conceived as a distinctively new, twentieth-century development in the theory and practice of despotism. The Soviet Russian state, as reshaped under Stalin in the 1930's, was coupled with the Nazi-Fascist type of system under the general heading of "totalitarianism." They represented respectively the totalitarianism of the

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[2]H. Gordon Skilling has advocated this view in his very useful article "Soviet and Communist Politics: A Comparative Approach," in The Journal of Politics, Vol. 22, 1960. Skilling is primarily interested in the comparative politics of different communist political systems, whereas I shall be concerned here with the comparative politics of communist and non-communist systems.

[3]Soviet Conduct in World Affairs, pp. 3, 5.

[4]Hans Kohn, Nationalism: Its Meaning and History, pp. 171-172.

"left" and the totalitarianism of the "right" -- two different species of one and the same new political genus. Though the political symbolisms differed, in all essentials the two types of system were identical. They shared the Fuehrerprinzip, the mass party brooking no opposition and extending its tentacles into all other organizations, the aggressive ideology and dynamism of external expansion, the use of the mass communications media to keep the controlled population always keyed up, the development of terror by concentration camp into a system of power, the penetration of the total state into every pore of the "atomized" society, and so on.[5]

There was good historical foundation for the trend of thought just reviewed. The fact is that Stalinism was essentially identical with Hitlerism and the other expressions of fascism. Unfortunately, however, the concept of the twin totalitarianisms of the left and the right did not clearly fix and delimit this fact. The theory of totalitarianism has tended to equate not Stalinism and fascism but communism and fascism, and this is a mistake. The two phenomena have a great deal in common, but they also significantly differ. The difference is visible and traceable within the political history of the Soviet Union itself. That is, communism differs from fascism as Leninism (or Bolshevism) differs from Stalinism. And a clear recognition of this is an essential prerequisite for the advancement of theory in comparative politics as it affects Russia and other countries.

It must be said that the theorists of totalitarianism are conscious of the difference just referred to. They show it by suggesting in various ways that Soviet totalitarianism is preeminently a phenomenon of the Stalin era. According to Wolfe, "the Soviet government had been established for more than a decade before Stalin, late in the twenties and into the early thirties, began to impose totalitarian controls upon it."[6] Arendt writes in the same general vein that: "To change Lenin's revolutionary dictatorship into full totalitarian rule, Stalin had first to create artificially that atomized society which had been prepared for the Nazis in Germany by historical circumstances."[7] Friedrich and Brzezinski observe, for

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[5]The outstanding and most influential book written from this point of view is Hannah Arendt's The Origins of Totalitarianism (1951). A notable attempt to develop the approach systematically has been made by Carl J. Friedrich and Zbigniew K. Brzezinski in Totalitarian Dictatorship and Autocracy (1956). Another effective proponent of the view in Bertram D. Wolfe, who calls totalitarianism "a total-power system" under which the state "strives to be coextensive with society" ("The Durability of Soviet Despotism," Commentary, August, 1957, reprinted in A. Dallin, op.cit.).

[6]Carl J. Friedrich, ed., Totalitarianism (1954), pp. 335-336.

[7]Origins of Totalitarianism, p. 312.

their part, that the emergence of totalitarian government in the Soviet Union "is marked by Stalin's liquidation of his erstwhile colleagues in the USSR's leadership and more particularly by his epochal struggle with Trotsky."[8]

The implication of these statements is that something in the nature of a change of political configuration, a transformation of regime, occurred in Soviet Russia between Lenin's time and Stalin's, and this is quite true. Lenin's system -- a "revolutionary dictatorship" -- was revolutionized by Stalin in a process that involved, among other things, the virtual destruction of Lenin's Bolshevik Party, and was supplanted by a Stalinist totalitarian autocracy. This process of transformation is accurately describable as a political revolution, although Stalin, for psychological and political reasons of his own, never admitted that fact. He never permitted his own new political order to be officially described as "Stalinism," and maintained to the end the myth of an essential continuity between the regime created in the October Revolution and the new regime created in and through his own political revolution from above.[9]

The theorists of totalitarianism, as has been indicated, recognize that a virtual change of regime occurred, but their theory does not. In effect, it says that the communist political system, established by Lenin and the Bolshevik Party, is what it became after Stalin revolutionized it and transformed it into a Stalinist political system. This is distantly comparable to viewing Weimar Germany as Hitlerian in essence since it paved the way for Hitler's Germany, which destroyed it. That Lenin's revolutionary dictatorship of the Bolshevik Party paved the way for Stalinism, and that the later system had much in common with the one it supplanted, is true. But if, on this account, we ignore the significant differences between them and view Stalinism as the effective reality of communism, we deprive ourselves of the theoretical basis for a comparative politics of the Soviet Union over time as well as a comparative politics of communism and fascism as two significantly different species of one genus.

A good comparative concept should perform a dual discriminating function: it should direct attention to the ways in which similar phenomena differ, and simultaneously to the ways in which differing phenomena resemble each other. In short, breadth as well as sharpness of focus is essential in comparative politics. I have suggested that the concept of totalitarianism is deficient in the latter respect since it fails to direct attention to significant differences between the closely resembling political phenomena of communism and fascism. I must now extend the

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[8] Totalitarian Dictatorship and Autocracy, p. 295.

[9] This analysis has been presented at greater length in the writer's paper on "The Politics of Soviet De-Stalinization," in World Politics (July 1957).

criticism by suggesting also that it fails to direct attention to significant resemblances between both these phenomena and a further class of phenomena belonging to the same genus: single-party systems of the nationalist species.[10]

This century has seen the rise of a large and still growing number of revolutionary nationalist regimes under single-party auspices. Turkey under Kemal-Ataturk, Nationalist China under Sun Yat-sen and Chiang Kai-shek, Tunisia under Bourguiba, Egypt under Nasser and Ghana under Nkrumah are some among the many examples that might be cited. If we disregard all considerations of international relations and look at these regimes simply as regimes, we see a political phenomenon that calls for comparison with communist and fascist regimes. We see the need for a comparative-political framework within which communist, fascist and nationalist single-party regimes may be analyzed in terms of their significant similarities as well as their significant differences, or as three species of a single political genus.

The definition of the political genus presents obvious difficulties. Ideally this definition should fix upon (1) that which is common to all phenomena of the class and specific to no one of the three postulated subclasses, and (2) that which differentiates this whole class of phenomena from others that may be more or less closely related to it. As a rough attempt I would propose the following formula: the revolutionary mass-movement regime under single-party auspices. For brevity I shall refer to it as the "movement-regime."

2.

The first element of the formula ("revolutionary") establishes that we are dealing with regimes born in revolutionary struggle and that once in being they strive to maintain revolutionary momentum. The movement to displace the pre-existing system of order then becomes a revolutionary movement for national renovation, or a movement to carry the revolution beyond the national borders, or both. In the case of the nationalist movement-regimes, especially in more recent times, the original revolutionary struggle is typically directed against a foreign colonial regime or regime of foreign dependency. With communist and fascist regimes, the typical -- though not necessary or invariable -- pattern is one of revolutionary struggle against an indigenous order

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[10]It must be said to the credit of Arendt that she stresses the relationship between the nineteenth-century "pan-movements" of nationalism and the totalitarian movements of the present century. Unfortunately, however, she considers the nationalist movements as simply historical forerunners of totalitarianism, and non-European nationalisms are more or less left out of the picture.

that is treated as though it were foreign. Thus, Lenin in 1902 conceived the Russian revolutionary movement as a nation-wide resistance movement against an essentially alien Tsarist monarchy and its supporters, and for Hitler the Weimar Republic was an un-German phenomenon. Stalin's was a marginal case in which the revolution against the pre-existing (Bolshevik) system of order was conducted from above. It is notable, however, that the purged old Bolshevik leadership was condemned as a treasonable, anti-national element.

The reader may have wondered why "ideology" was not included as an independent element of the formula. It might have been, but for simplicity's sake it seems preferable to consider this extremely important factor under the "revolutionary" heading. The ideology is essentially the idea of the revolution, the program of the revolutionary struggle. As such it not only provides political orientation but serves as a powerful organizing instrument in the hands of the leadership. As Lenin said, "Without a revolutionary theory there can be no revolutionary movement."[11] Every movement-regime is associated with an ideology. As will be suggested later in this paper, comparative analysis of the ideologies may be useful in differentiating communist, fascist and nationalist forms of the movement-regime.

Revolutionary regimes are not at all new in history, but the revolutionary mass-movement regime is a relatively novel phenomenon. The idea is traceable at least as far back as Mazzini, and earlier intimations of it are to be found in eighteenth-century France.[12] Thus, Mazzini's contemplated revolution of national liberation and unification of Italy was to bring into being a third and greater Rome, "the Rome of the People," which in turn would provide leadership for all of Europe in creating a Europe of the people. The revolution was to be accomplished, moreover, with the active participation of masses of the people under the guidance and energetic leadership of an elite organization, Young Italy.

The history of politics in the twentieth century could be written in terms of the realization of the dreams of the nineteenth -- and the discrepancy between dream and reality. The contemporary world contains a multitude of regimes, born in revolution, that rest upon and represent, or claim to, mass movements of a national or trans-national scope. In the typical case the mass movement is organized during the revolutionary struggle for power and as a means of waging this struggle. Once the regime is in being, the mass movement is enlarged and given new tasks of various kinds. In some instances (present-day Egypt, for example) the development of the mass movement occurs after the conquest of power. In some instances too, it remains largely a political artifact or pretence of a mass movement.

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[11] What Is To Be Done?, in Selected Works (Moscow, 1946), Vol. I, p. 165.

[12] J. A. Talmond discusses the eighteenth-century background in his Origins of Totalitarian Democracy (1952).

The third common element is the militant centralized revolutionary party, or "vanguard" party as we may call it, which takes power in the name of the movement and the nation and then assumes the new function of governing the country single-handedly. Mazzini's phrase "party of action" foreshadowed the nature of this new type of party. Its character is largely determined by the circumstances of its origin. Since it arises outside of, and in opposition to, an existing system of law and order, electioneering is not its métier. Though it may take part in a given election for tactical purposes, it exists to overthrow a political order rather than to come to power within it. In the typical case it develops as a disciplined elite connected with a mass following through party "cells" in the enemy-order, and usually has a single dominating personality as its top leader and organizer. It is in essence a political warfare organization, and as such tends toward conspiratorial habits and a quasi-military, authoritarian concept of its internal organization and relation to the mass following. Since its revolutionary ends transcend the destruction of the old order, the latter event is simply a new beginning. The party becomes the staff headquarters of the new revolutionary movement-regime, the territorial committees and cells become units of rule, and the single-party state is born.

The concept of the revolutionary vanguard party, with its "cellular structure" penetrating the pores of the old society, was rather well developed already in the nineteenth century, particularly among the Russian Narodniki. But it found its most influential exponent early in the twentieth century in Lenin. Unlike Marx, who tended to think that history itself would make the revolution, Lenin based all his thinking on the premise that revolutions have to be organized. His theory and practice of revolutionary "party construction" not only shaped the organization of communist movements everywhere; it also radiated far and wide into nationalist and fascist movements. A well known instance of this diffusion occurred in the early 1920's, when Sun Yat-sen decided to remodel the Chinese national revolutionary party (Kuomintang) in accordance with the Leninist concept, and the Russian Bolshevik Mikhail Borodin was sent to supervise the overhauling. A little later Chiang Kai-shek gave the Russians a lesson in what might be called "anti-Communist communism" by turning the assimilated Bolshevik-type organizational forms against the Chinese Bolsheviks and their Muscovite mentors. The lesson was not lost on Stalin, who in the 1930's made use of Bolshevik organizational forms in destroying the Russian Bolsheviks, save for those whom he permitted to survive as Stalinists.

An instructive present-day example of a nationalist movement-regime with a ruling party shaped in the Leninist image may be found in Tunisia. President Bourguiba's Liberal Constitutional (Neo-Destour) party "has covered the whole country with a network of a thousand cells" which "replace the 'infra-structure' of the modern state." "The party members who are organized in cells form the party Congress, which elects an executive, the Political Bureau. The Political Bureau is the main instrument of government....The Political Bureau exercises tight control over the party machine, in which it has established a kind of 'democratic centralism'....The Liberal Constitutional party has

established a large network of organizations which embrace practically the whole population."[13] The exquisite irony of the situation is that the Communist Party of Tunisia is the sole opponent of President Bourguiba's regime.

One further generalization is called for with regard to the movement-regimes as a class. Since the militant centralized revolutionary party becomes the new foundation of political authority, and its cellular structure the "infra-structure" of the new state, the movement-regime takes on the authoritarian character of the founding organization. In certain instances (about which more later) it subsequently grows much more authoritarian, and the adjective "totalitarian" may become applicable. However, the leadership of the authoritarian movement-regime insists that it is also democratic in a "new way" (i.e., not the liberal Western way). This mode of thought, in which the dichotomy of "dictatorship--democracy" is rejected, is an outgrowth of the original concept of the revolutionary struggle as a mass movement for national or supra-national objectives under guidance of a disciplined political elite organization. The result is one or another version of the doctrine of "guided democracy," of which, again, Lenin was the preeminent exponent.

The notion should not be dismissed as simple hypocrisy, although it may be that in any given instance. If "democracy" here loses the connotation of effective popular control over the regime (which is, by self-definition, the group that knows best what is in the interests of the people), it simultaneously acquires the connotation of mass popular participation in the continuing revolution of national renewal. In practice this means the enlisting of masses of people in the activities of trade unions, youth, professional and other organizations that are formally non-party in character but are operated under party guidance and supervision via directorates from top to bottom in which disciplined party members predominate (the so-called "transmission belts" of Leninist theory). A large proportion of the population is thus drawn into the whirlpool of guided public life, and many may derive an experience of political participation that was denied them under the old regime. In Russia the foremost non-party organs of controlled participation are the soviets or local councils, which arose before the October Revolution and independently of communism but were later reshaped into components of the Bolshevik movement-regime. Today they form a pyramidal network of thousands of party-guided bodies at village, town, district and province level, with deliberative and administrative functions in which several millions of deputies and sub-committee members take part. Very many of these people have no direct party affiliation.

This brings us again to the principle of transferability of organizational forms among movement-regimes of different types. Recently, for example, a pyramidal system of "councils," quite comparable in concept if not in all details to the one just described, has been introduced under the auspices of

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[13]Hans E. Tutsch, "Bourguiba's Tunisia--I," The New Leader, February 29, 1960, p. 7.

President Nasser's National Union regime in Egypt, and President Mohammed Ayub Khan's new regime in Pakistan is now introducing a similar setup there under the heading of "basic democracy." A close associate of President Nasser's has explained to a Western journalist that the purpose of the Egyptian councils is to enlist mass participation at the village level in the revolution of national renewal: "The real revolution must come in the villages....Every village has elected a council, replacing the old appointed Mayor. The council constitutes itself a cooperative and works with the Government's agricultural experts." The journalist reports that Nasser aides are not insulted if this system is described as "guided democracy," and he quotes the close associate further as saying: "We have a concept of democracy, it differs from yours.... We need something more dynamic, more realistic....If we use your system the Communists will succeed, because they can speak to the masses."[14] Thus, there can be anti-Soviet sovietism in the field of "guided democracy," as well as the previously mentioned phenomenon of anti-Communist communism in the field of party organization.[15]

A final observation about the movement-regime is that it has no restricted habitat in the world. A comparative politics of movement-regimes is not a regional affair, and defies the classifications of political systems according to geographic zone.[16] There is a rough correlation between antecedent colonialism and the rise of nationalist movement-regimes, or alternatively of communist movement-regimes that ride to power on a wave of nationalist revolution. There is a related and still rougher correlation between the movement-regime and the conditions of economic and cultural backwardness, feudalism, stagnation, etc., that lend a special cogency to the revolutionary call for renovation of the nation. All this might suggest the thought that the specific habitat of the movement-regime is the "East" or, more broadly, the "under-developed areas."

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[14] "New Mood Found in Nasser's Egypt," by Dana Adams Schmidt, in New York Times, December 29, 1959, p. 2. The Pakistani experiment is reported by Paul Grimes in "Pakistanis Study Government by Practice on Local Problems," Ibid., June 29, 1960, p. 14.

[15] In this connection it may be worth noting that a group of anti-Soviet Russian emigres has recently put forward, under the heading of "Kronstadt Thesis," a program whose slogan is: "Down with the party, all power to free soviets!" The program takes its name from the Kronstadt rising of 1921, when sailors and workers called for soviets without Bolsheviki. A partial text appears in Novy Zhurnal, No. 59, 1960.

[16] Gabriel Almond, for example, has recently proposed a classificatory scheme that turns on the notion of "political culture," which is defined in part according to area. The result is a fourfold classification of political systems under the Anglo-American, Continental European, pre-industrial and totalitarian categories. See his "Comparative Political Systems," in The Journal of Politics, Vol. 18, 1956.

Yet such regimes, in one form or another, have appeared not only in Russia, Asia, the Middle East, Africa, Latin America and Eastern Europe, but also in parts of Western Europe (Germany, Italy, Spain, Portugal); and Hitler's Germany was hardly an under-developed area. Moreover, movements bearing within themselves the germs of potential movement-regimes have arisen in many other countries, including Great Britain and the United States. The movement-regime is a political phenomenon to which no nation and no part of the world is completely immune.

3.

The differentiation of the species of movement-regime presents a much more difficult and complex problem than the definition of the genus. There are many avenues of approach to it, variously emphasizing social, economic, historical, religious and psychological factors, etc. The most that can be attempted here is to present a few pertinent observations from the special standpoint of a comparative politics of movement-regimes.

First, it must be said that we are dealing with classes of phenomena that may be distinguishable but are not fully distinct. There are very few hard-and-fast lines of separation in this field. Thus, elements of nationalism are to be found in both communist and fascist movement-regimes, and any formulae for the latter that excluded this fact would be useless. It therefore appears inadvisable to segregate the species under conceptually pure "ideal types." Allowance must be made for complexity of character and even for the possibility of genuine hybrids. In short, nationalist, fascist and communist movement-regimes are best differentiated according to their characteristic prevailing tendencies.

One important basis for such differentiation lies in the motivation of revolutionary politics, or what is often called the "revolutionary dynamism." All the movement-regimes originally have a revolutionary dynamism. They come into being by the revolutionary displacement of a pre-existing order, and seek to maintain revolutionary momentum after they come to power. They may, of course, fail to do so. They may lose revolutionary momentum eventually. When this happens they become what I shall call "extinct" movement-regimes. Like a star that has ceased to give off light, an extinct movement-regime may go on existing for a long while without a revolutionary raison d'etre. We may say of such a regime what Herzen in 1853 said of the Russian monarchy, that it "exercises power in order to exercise power." And the fate of the Russian monarchy, which was once itself a kind of revolutionary movement-regime, is probably that of all movement-regimes that lose their revolutionary momentum.

The revolutionary dynamism of the nationalist movement-regime is

relatively restricted in scope and easy to define. Here the goal of the revolutionary movement is, firstly, national independence, the creation of a sovereign nation-state. Secondly, the revolutionary movement is aimed at the modernization of the newly independent state, and this typically involves many elements of an internal social revolution. Old class relations in society, old patterns of land tenure, old customs, old traditions of thought and generally old ways of conducting the business of life are assailed in an internal revolution of national renewal. However, purely nationalist revolutionary movement-regimes show a definite tendency to spend their revolutionary force rather early. Oftentimes this happens soon after the achievement of the original revolutionary goals and prior to the completion of the revolutionizing of the old society. In other words, the nationalist movement-regime is peculiarly the prey of the phenomenon of "extinction."

In the best of cases, of which the Kemalist movement in Turkey might be an example, the revolution of national renewal is carried through far enough under the auspices of the movement-regime to make possible an orderly further development in a new and more democratic direction. More typical, however, may be the case of the Chinese Kuomintang, where the early subsiding of revolutionary dynamism paved the way for the displacement of the nationalist movement-regime by a communist movement-regime that came to power under the slogan of carrying through the "betrayed" revolution of national renewal. A similar general situation and possibility may exist, for example, in present-day Indonesia. In general, communist movement-regimes, where not installed by direct action of a foreign power, as in most of Eastern Europe, North Korea, etc., after World War II, tend to arise as the penalty for either the absence of an effective national revolutionary movement where conditions call for it, or the inability of nationalist movement-regimes, once in being, to maintain their initial revolutionary momentum.

The relatively low revolutionary dynamism of the nationalist movement-regime is correlated with a relatively restricted revolutionary "constituency." The ideology of the national revolution is itself national. The sovereign independence and renovation of the nation are the objectives. Once installed in power, the nationalist movement-regime may develop an active foreign policy within what is likely to be a neutralist orientation in world affairs. But this will not be a policy of active export of the revolution to other lands. Such revolutionary expansionism is, on the other hand, a distinctive characteristic of both communist and fascist movement-regimes. Here the sphere of outlet for revolutionary energy is not confined to the national homeland. The politics of revolution embrace not only the revolutionary capture of power and subsequent internal revolution, but also, in varying manner and degree, the turning of the revolutionary dynamism out upon the world. Thus, when a new movement-regime embarks upon a course of active export of the revolution to other countries, this may be taken as a fairly strong indication that it belongs not to the nationalist species but to one of the other two. The Castro regime in Cuba would be a case in point.

Communism and fascism are often contrasted on the ground that the one has an international "class appeal" while the other has a "national appeal" and is nationalist in essence. There is something in this idea, but it is also quite misleading. The dichotomy of communist internationalism versus fascist nationalism overlooks the fact that national and international elements commingle in both phenomena. On the one hand, the communist movement-regime is committed to a form of the national revolution as well as to the goal of world communism. On the other hand, the fascist movement-regime is committed to a supra-national revolutionary idea as well as to the internal or national revolution.

With regard to the first point, the communist movement-regime appropriates not only the appeals of the revolution of national renewal but also the task of carrying it through when the movement comes to power. Bolshevism set an example of this in the early nineteen-twenties, when revolutionary enthusiasm still ran high in Russia. It must be said, moreover, that in Lenin -- who defines the communist type if anyone does -- there were elements of nationalist as well as Marxist revolutionism. These are visible in his vision of a renovated Rus' ("Communism equals the Soviet regime plus the electrification of the country," etc.), and in such steps toward its realization as the GOELRO. Later this turned into Stalin's vision of an all-powerful Rus', and the subsequent phases of the internal revolution were shaped by the policies of forced industrialization and coercive collectivization. This development deeply influenced the communist concept of the internal revolutionary process. Though communist movement-regimes assume the task of carrying through the revolution of national renewal, their special manner of doing it, conditioned by the Russian experience, usually causes the movement to lose appeal in the eyes of most or many of the people.

With regard to the second point, the fascist revolutionary dynamism shares with the communist a supra-national scope. Both give ideological expression to this by proclaiming a supra-national revolutionary constituency and also an international enemy of the revolution. In the classic Bolshevik conception, the revolutionary constituency begins with the working classes of the revolutionary homeland and embraces the working classes of all countries, and the international bourgeoisie (or "international imperialism") is the enemy. Fascist regimes differ in their ideologies, but these regularly show a dualism that is comparable in kind if less comprehensive in scope. They take the nation as the nucleus of a larger whole, a supra-national revolutionary constituency or sphere of revolution. Thus, for Hitler the German Volk was the nucleus of the "Nordic race," and international Jewry and/or international imperialism was the enemy of the national-socialist revolution. For Mussolini "Romanism" was the key word, and the larger sphere of revolution was reflected in the slogan: "Italy today, tomorrow the Roman Empire!" Examples could be multiplied. The dual symbolism of President Nasser's movement-regime, which views Egypt or the U.A.R. as the nucleus of a vast "Arab nation" embracing all the separate Arabic nations and Arabs wherever they are, belongs to the pattern in question. Taken in conjunction with Nasserist activity in the way

of attempted export of the revolution to neighboring countries, this fact suggests that it would be a mistake to construe Nasserism as essentially nationalist in essence although it does display some features of a nationalist revolutionary movement.[17]

In certain instances, typically occurring in smaller countries, communist and fascist movement-regimes cease to display a dynamism of revolutionary expansion. Then we see the phenomenon of "national communism" or, alternatively, "national fascism" (of which present-day Francoist Spain might be a good example). This development may be, and in the latter case no doubt is, indicative of a general loss of revolutionary momentum and the tendency to grow "extinct." On the other hand, the loss of one form of revolutionary dynamism may always go along with the recovery or emergence of another. The subsiding of external revolutionary expansionism may, as in the case of Titoist Yugoslavia, be accompanied by something in the nature of an internal political "reformation" in which the movement develops with greater vigor than before but in different directions. Not "national communism" but "communist nationalism" seems the proper formula for the Titoist movement-regime.

One further consideration is called for with reference to the fascist form of movement-regime. Although its sphere of revolution is not confined to the national homeland, it does typically indulge in strident national self-glorification. It proclaims its nation to be supreme in all the recognized national virtues, and declares that the good of the nation is the highest goal of the regime. This has led some scholars to see in fascism "an inflammation of nationalism."[18] It seems, however, that this inflamed nationalism is essentially a pseudo-nationalism, and that fascists must be distinguished from authentic nationalists as being, at best, the pharisees of nationalism. Thus, when Hitler saw that all was lost, he desired the destruction of the German nation as punishment for its unworthiness. Germany had not been worthy of its Fuehrer. Obviously, the supreme value was not the German nation but the Hitlerite self, and the official glorification of the nation had been a cover and vehicle of the leader's self-glorification.

I take this to be indicative of a critically important general fact about the fascist type of movement-regime, viz., that here the psychology or more accurately the psychopathology of the leader becomes the driving wheel of the political mechanism. The regime is shaped into a highly

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[17]For a discussion of various considerations relevant to a judgment on this question, see the forthcoming book of P. J. Vatikiotis, The Army and Politics in the U.A.R. (Indiana University Press), Chapter VII.

[18]Hans Kohn, Nationalism: Its Meaning and History (1955), p. 79.

complicated instrumentality for acting out the needs of the paranoid leader-personality, whose psychodynamics are politicalized, i.e., expressed in political action. Thus, the Nazi regime started the second World War in 1939 at a time when it was militarily not yet prepared and to the chagrin of many of its highest officials, military and civilian. It was propelled into this action not by a cold calculation of relative forces and risks, but by the compulsive need of Hitler for revenge against his enemies. When his advisers warned him against it on the ground of the enemies' strength, he replied: "Then I will build U-boats! U-boats! U-boats!...I will build airplanes! airplanes! airplanes! -- and I will exterminate my enemies!"[19]

In order to shape the regime into a means of expression of his personal needs, the leader must reduce the ruling party to the role of an important cog in the apparatus of the state. It was pointed out earlier that movement-regimes tend to be headed by a dominating individual personality. This, however, does not imply that they are absolute autocracies. In fact, the broad tendency is oligarchical rule by the top leadership of the ruling party under the overall direction of the dominant personality. The fascist movement-regimes deviate from this pattern and show a pronounced tendency to absolute autocracy, which involves the subordination of the party to the state as embodied in the leader. He emancipates himself from the control of the party oligarchy, and relies heavily upon the secret police and permanent pervasive terror through this organization to ensure unquestioning compliance with his least wishes on the part of everybody from the lowliest man in the street to the highest dignitaries of the regime. Consequently, fascist regimes tend to become highly statist in orientation, and the state as personified in the leader displaces the party as the supreme symbol and object of official adoration. For these reasons the most accurate general term for the various fascist movement-regimes would be "fuehrerism," and the most accurate title in each individual instance would be the one formed from the leader's name (e.g., "Hitlerism" rather than "Naziism").

It is clear that Stalinism was a Soviet Russian expression of fuehrerism. Space is lacking for an analysis of it from this point of view. It may be

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[19] G. M. Gilbert, The Psychology of Dictatorship, Based on an Examination of the Leaders of Nazi Germany (1950), p. 301. Gilbert concludes: "Our study of Hitler's lieutenants strongly suggested that if any one of them had replaced Hitler before 1939, (even aggressive Hermann Goering, the heir apparent), or if a slight change in circumstances (such as a little less appeasement) had replaced the Nazis with leaders more responsive to the will of the people, then there probably would have been no World War II and there certainly would have been no systematic 'extermination of my enemies'" (Ibid., pp. 302-303).

pertinent to note, however, that Stalin, in addition to destroying the old Bolshevik Party, establishing an absolute autocracy, and promoting statism in theory and practice, effected a revolution of revolutionary symbolism. The nucleus of the world-wide revolutionary constituency was redefined after 1945 as the Russian nation qua nation, and the official definitions of the enemy of the revolution placed more and more emphasis, particularly toward the end, upon international Jewry. All this brought the revolutionary symbolism into approximation to the typical fascist pattern, although the working classes abroad continued to be pictured as the external revolutionary constituency. It is notable, however, that Stalin, very shortly before his death, expunged the word "Bolshevism" from the official vocabulary of his regime. It had become a purely Stalinist regime in all but name.

In an article cited earlier, Bertram Wolfe writes: "When Stalin died in 1953, Bolshevism was fifty years old."[20] I think it would be more accurate to say that Bolshevism had been moribund in Russia for fifteen years, and the issue was whether it would revive and if so to what extent. From the standpoint of a comparative politics of movement-regimes, the political history of Russia since 1917 is a history of different movements and of different Soviet regimes within a framework of continuity in organizational forms and official nomenclature. The original Bolshevik or communist movement-regime underwent metamorphosis in and through a political revolution from above, and was supplanted with a Stalinist movement-regime that was prevailingly fascist or fuehrerist in its inner dynamism, its ideology, and its general political tendency. With Stalin's death a new change of regime occurred in revolutionary Russia, and it might be epitomized by saying that Stalin's successor has tried in his way to be Lenin's successor, i.e., to reconstitute the political system of Bolshevism. The political changes in Russia after Stalin's death belong to the pattern of an attempted resurrection of Russian communism. An inspiration at any rate, Khrushchevism is essentially a revivalist movement in the world of twentieth-century revolutionary politics.

"A new science of politics is needed for a new world," wrote Tocqueville 125 years ago. His reference was to the new world of the "democratic revolution." The statement is even more true now than when it was written, although our new revolutionary world is no longer, it appears, a world of the democratic revolution.

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[20] Soviet Conduct in World Affairs, p. 268.

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LESSONS FROM EFFORTS TO TRAIN FOREIGN ADMINISTRATORS IN THE UNITED STATES

By

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8th - 10th, 1960.

In a recent article H. J. van Mook has raised some of the basic issues in training abroad in Public Administration for students from underdeveloped countries.[1] This excellent article reflects the many years of experience of a senior member of our profession as colonial administrator, international civil servant, and college teacher. Those interested in the subject matter would benefit from a careful reading of the article in its entirety, and I will not attempt to summarize it here. Instead, I want to quote one of its leading passages which will serve as the theme for this paper:

> No country can really expect to develop its public administration in a manner conducive to its lasting improvement unless it generates its own scholarship and research in the field. Foreign experts and advisers can offer help in shaping programs and methods of research and teaching, or by transmitting their own knowledge and understanding to a few people in each country . . . But each nation and culture can only reach the core of its problems in public administration from within, by its own experimentation and experience.[2]

In thus focussing on indigenous teaching and research, and on the indigenous educational and training institutions, Mr. van Mook places a clear-cut priority on the foreign training in administration of carefully selected, mature scholars of outstanding ability, enabled to study abroad for relatively lengthy periods of at least two

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[1] "Note on Training Abroad in Public Administration for Students from Underdeveloped Countries," by H. J. van Mook, International Review of Administrative Sciences, (XXVI-1960, I), pp. 67-69

[2] Ibid., p. 67

or three years in duration, and whose involvement in educational and scientific work, upon return home, would be assured. It should also be noted, in fairness to Mr. van Mook, that he finds a definite, but secondary, place for graduate study abroad of shorter duration for able and promising middle-level civil servants, who may be expected to play a prominent part in the reform of national administrations, and he makes a number of suggestions for the establishment of special arrangements to meet a variety of needs.

What, then, of the role of the American University in the training of Public Administrators? I would like to suggest that the primary business of American Universities in overseas development is educational development; that with respect to the training of administrators, primary attention should be devoted to the training of the corps of teacher-scholars in Administration in the underdeveloped countries, which will staff the educational and training institutions in this field; and that the current efforts attached to this objective, while substantial, are insufficient. It is also part of my thesis that, in order to provide effective training, new and broadened attention will need to be given to the comparative and international aspects of the discipline, and to its organization in the University, and that promising developments along these fronts have been instituted.

In order to explore the argument, it will be necessary to look into the facts; who are the foreign administrators and foreign students in Public Administration; what is the nature of their interests and needs; what has been the response of the field in American universities to the problem; and what are the effects of these efforts on the growth and scope of the field and its relationship to other fields in the University.

Foreign Trainees in Public Administration

In the academic year just past, there were 380 foreign students studying Public Administration in U. S. universities and colleges.[3] This was less than one per cent (1%) of the 44,486 foreign students in all fields, and more than five per cent (5%) of the foreign students in the social science disciplines. (For foreign student enrollment in all fields, see fig. 1; for their enrollment in the social science fields, see fig. 2.)

The vast majority of these 380 foreign students in Public Administration came from the underdeveloped areas, 200 from the Far East alone (including South and Southeast Asia, except Pakistan). (For the region or country of origin of foreign students in Administration, see fig. 3.)

Significant clusters of students from individual countries appear to bear a close relationship to special projects or programs in Administration of the governments of these countries, sponsored by one or more of the technical assistance or other aid-granting institutions. Thus, the five leading countries, in terms of numbers of students in the United States, are: Indonesia - 35; Korea - 33;

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[3] Institute of International Education, Open Doors, 1960, Report on Educational Exchange, New York City, p. 25

India - 32; The Philippines and Thailand - 25 each. All of these countries have projects in Public Administration actively supported by the United Nations, the International Cooperation Administration, and/or The Ford Foundation. (Although the Colombo Plan has also provided assistance in the field, its Fellows have received training in Australia and Canada.)

The number of students in the field does not tell the whole story. Most of the trainees in Public Administration are not enrolled in a college or university. There were apparently about 900 trainees from all sources in the United States during 1960. For example, the International Cooperation Administration sponsored a total of 853 Public Administration "participants," (its term for "trainee") in the fiscal year ending June 30, 1960. A majority of these, however, were on short-term assignments lasting from one to six months, and only about one-third of the total were assigned to universities. (For a breakdown of the ICA totals, see fig. 4.) It is doubtful that trainees from all other sources exceeded 50, but the figures are difficult to get. The United Nations had a total of 137 Fellows in study in the United States during 1959, of which there were five Public Administration Fellows in the "regular" technical assistance program, and a larger but unspecified number under the "expanded" program.[4] The Ford Foundation, through its Overseas Development Program, sponsored about 20 Fellows in the field during 1959-60.

Too much significance should not be placed on mere numbers. I mention them here mainly to give some notion as to the general order of magnitudes that we are dealing with in the field, and the rough division of the totals between short-term and longer-term visitors. I would assume that the 380 students represent the group that is likely to be here long enough to get a fundamental exposure to the ideas and concepts, as well as to the techniques and methods of the field. It is from this group, I assume, that there is some possibility of recruiting and training the corps of teacher-scholars in Administration which is the seed corn of the future growth of the field in the underdeveloped countries.

I should note here in passing that it is not part of my purpose to discuss the policies and programs of the technical assistance and other aid-granting organizations in the field. A panel discussion on the general subject of "Education for Public Administration" would, I assume, concentrate on the role and activities of the universities. In any event, we will have as discussants on the panel senior representatives of the two largest Public Administration Programs, Mr. Shiram Bapat, of the United Nations and Mr. Macdonald Salter, of the International Cooperation Administration. In the discussion of our topic, I hope they will take the time to describe some of the current activities, and the very real accomplishments, of the programs they represent.[5]

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[4] United Nations, Economic and Social Council, "Technical Assistance Activities of the United Nations," (E/3366) May 23, 1960, Table 9, p. 62.

[5] For short descriptions of the work in Public Administration of these organizations, cf., United Nations, op. cit., pp. 42-50; International Cooperation Administration, Public Administration Division, "ICA Work in Public Administration," March 1960; and Ford Foundation, Annual Report, 1952 to present.

Fig. 1 Foreign Student Enrollment in Major Fields*

Field	Number of Students
1. Engineering	11,279
2. Humanities	9,246
3. Physical and Natural Sciences	7,276
4. Social Sciences	6,782
5. Business Administration	4,114
6. Medical Sciences	3,685
7. Education	2,483
8. Agriculture	1,615
9. All Others	2,006
TOTAL	48,486

*Source: Institute of International Education, Open Doors, 1960, Report on Educational Exchange, New York, pp. 24 - 27

Fig. 2. Foreign Student Enrollment in the Social Sciences*

Field	Number of Students
1. Economics	1,923
2. Political Science	722
3. Sociology	645
4. Psychology	620
5. Home Economics	584
6. History	518
7. Law	453
8. International Relations	391
9. Public Administration	380
10. Social Work	314
11. Other	232
TOTAL	6,782

*Source: Open Doors, 1960, ibid.

Fig. 3. Geographic Origins of Foreign Students in Public Administration*

Region or Country	No. Students
1. Far East (200)	
Indonesia	35
Korea	33
India	32
Philippines	25
Thailand	25
All Other Countries	50
2. Near and Middle East (61)	
Iran	19
Turkey	8
Jordan	6
Iraq	5
Israel	5
All Other Countries	8
3. Africa (38)	
Nigeria	7
Kenya	6
Morocco	6
Egypt	5
Ethiopia	4
All Other Countries	10
4. Europe (34)	
Greece	11
United Kingdom	5
Sweden	4
Norway	3
Italy	2
Spain	2
Yugoslavia	2
All Other Countries	5
5. Latin America (26)	
Colombia	5
Venezuela	3
Brazil	2
Barbados	2
Jamaica	2
Honduras	2
Panama	2
All Other Countries	8
6. North America (16)	
Canada	16
7. Oceania (5)	
Australia	2
Pacific Islands	3

Total of 380 Students

* Source: Open Doors, 1960, pp. 25, 27

Fig. 4. ICA Participants in Public Administration, FY 1960*

1. Programmed by ICA		
(a) Arrived in the United States during FY 1960	425	
(b) In U. S. at beginning of FY 1960	237	
		662
2. Programmed through University Contracts		
(a) Arrived in United States during FY 1960	123	
(b) In U. S. at beginning of FY 1960	68	
		191
TOTAL		853

*Source: Public Administration Division, ICA (courtesy Mr. Salter)

Interests and Needs of Foreign Students

A number of studies have been made of the interests and motivations of foreign students, and of their needs and requirements. They can be divided into social and cultural needs, on the one hand, and intellectual and professional needs, on the other.

Trainees in the field of Public Administration have an over-riding interest in development and growth, and in the status and prestige, of their home countries. They wish to advance their countries' welfare at home, its standing in the world community at large, and to prepare themselves to play an active role in this process. That is to say, their interests and motives, like those of American students, are both many and mixed, and include elements of idealism, nationalism, and self-interest. For students from the underdeveloped countries, these interests to a remarkable degree are focussed on the process of "development."

Trainees, fellows, and students from underdeveloped countries are thus especially interested in the national planning of development, and the role of administration in it. Administrators who are here only for a short time naturally want to know as much as possible about the American practice in their own specialty, and to discuss common problems with our practitioners. Those who are here as students are more likely to ask what the contribution of Administration is to the theory of development, as well as to desire training in a specialized field, although obviously these two considerations can never be wholly separated. Both types of visitor have the problem of making some kind of adjustment to American culture and society, and of integrating what they see and learn with previous experience, on the one hand, and with future professional problems and opportunities, on the other.

Social and cultural adjustment. This is a subject on which a great deal of social science research has been carried out, much of it under the sponsorship of the Committee on Cross-Cultural Exchange of the Social Science Research Council. At the risk of substantial over-simplification, a summary of some of the findings of this, and related, research might include the following:

1. There are significant nationality differences affecting the ability of foreign trainees to adjust to American culture, and to benefit from training here. Swedish students who were studied, for example, came to terms with U. S. culture much more rapidly than did Japanese students, while Mexican and Indian students seemed to fall somewhere between these extremes.

2. A second culture (i.e., the United States) is perceived in terms of the important values brought over from the home culture, as though the student wore "cultural" glasses fitted at home. The longer a foreign student remains in the United States, however, at least up to three or four years, the greater his ability to make sophisticated and discriminating judgments and comparisons between U. S. values, institutions and practices and those of his home country. Moreover, undergraduates tend to learn more about "America," while graduate students learn more about their specialties.

3. There are several phases of adjustment in the typical pattern of foreign students, resembling a "U-shaped Curve." These are the spectator phase, the involvement phase, the coming-to-terms phase and the pre-departure phase. These are marked successively by high satisfaction, a slough of dissatisfaction as the problems of adjustment become more difficult, followed by increasing satisfaction as these problems are worked out and the trainee prepares to return home. Time factors related to these phases vary as between nationality groups, and individuals within them, but it is necessary for teachers and trainers to be aware of these factors if they wish to establish successful communication with foreign students.

4. As students and trainees seek to accommodate to the requirements of the new culture, and at the same time to retain their loyalty to the home culture, there is a strain which has been termed the "overlapping membership conflict." It is believed that organizational or professional interests may be especially effective in transcending this conflict.

5. Foreign students thus need considerable training and orientation with respect to personal problems of food, housing, and general American culture, and with respect to academic problems including the U. S. educational system and teaching methods. They also need to prepare themselves adequately, preferably before arrival, in English language competence, both speaking and writing. One study found, for example, that it took foreign students, on their own admission, an average of 18 months to "feel comfortable" in the use of the language.[6]

Intellectual and Professonal Needs. The principal objectives of foreign training, however, are usually intellectual and/or professional. The lesson of research on cross-cultural adjustment is that a successful learning situation will probably not be established unless at least a minimum adjustment is made to the United States. Assuming a reasonably successful adjustment is made, however, there are equally difficult intellectual and professional problems, which may be briefly listed as follows:

1. The trainee in Administration needs a special introduction to the historical, political and governmental situation in which American administration arose and is practiced today. The typical foreign trainee or student in Administration has little knowledge or appreciation of factors of American political history, or of federalism, or of the presidential system of government. Graduate work in American universities usually assumes such knowledge, and discussions between practitioners usually does, although implicitly. Trainees also need exposure to, and training in, actual administrative operations.

2. Trainees and students from underdeveloped countries are frequently products of the "rote learning" system of education. Moreover, status relationships

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[6] Cf., Richard D. Lambert and Marvin Bressler, Indian Students on an American Campus, 1956; Franklin D. Scott, The American Experience of Swedish Students, 1956; Ralph L. Beals and Norman D. Humphrey, No Frontier to Learning: The Mexican Student in the United States, 1957; John Bennett, Herbert Passin, and Robert McKnight, In Search of Identity: The Japanese Scholar in America and Japan, 1958; and Richard Morris, Two-Way Mirror, 1959. (All above were published by the Univ. of Minnesota Press, Minn.) Cf., also, "Attitudes and Adjustment in Cross-Cultural Contact: Recent Studies of Foreign Students," M. Brewster Smith, ed., Journal of Social Issues (Vol. 12, 1956); George Coelho, Changing Images of America, Glencoe, The Free Press, 1958; John & Ruth Useem, The Western Educated Man in India, N.Y., Dryden Press, 1955; and "Training Foreign Nationals in the U.S"

are such that a teacher, or a superior officer in an organization, is rarely questioned on points of fact or value. Thus, "empirical thinking," or training in problem-solving methods, is not likely to be part of the intellectual equipment of the foreign student or trainee. He will need special assistance if he is to acquire aptitude in these ways of thinking.

3. Trainees and students also need help in acquiring information and knowledge that will be especially useful in administrative problems in his home country. Since the curriculum in most Schools of Administration and Departments of Political Science is designed primarily for an American audience, this need poses a special problem for the scope and content of the discipline. The need for special attention here is particularly accute in relation to the writing of special papers, theses, and dissertations.

4. Although the practice of selecting persons of some standing and experience in administration reduces the need for assistance in placement on return home, the trainee and student in Administration has need for continuation of professional contacts if his training in this country is to be of maximum value. Efforts to maintain and build on the interest and competence in the field, established through training, appear to be needed.[7]

Response of U. S. Universities to the Problem

No discussion of the response of U. S. universities to the need of foreign administrators for training would be complete, without some reference to the processes by which they recruit and select trainees, by which English language competence is either assured or provided, and orientation is given. These are all matters of obvious importance, but I do not intend to dwell on them here. They are also matters about which a great deal of thinking, discussion, and writing has already gone on. Moreover, I have an impression that the field of Public Administration is using its educational and professional contacts throughout the world, which by now are quite considerable, to good effect in strengthening these processes. I should like, therefore, to pause on this subject just long enough to summarize what I believe to be some of the current thinking in the field, and to point out one or two experiments in other fields.

I sense a disposition on the part of universities to insist, more than ever, on high standards of quality and performance on the part of foreign students. In part, this may be in response to the rising enrollment of American students. But its also a judgment, based on experience, that anything else is self-defeating. The foreign students themselves are the first to resent the attitudes that are apparently widespread in some of their home countries that American education is inferior, and that their degrees, to use Clifford Wharton's phrase, are "underdeveloped Masters" or "Oriental Ph.D." degrees.[8] Instead of a double standard of

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6 Cont. by Simon O. Lesser and Hollis W. Peter, Extract from Some Applications of Behavioral Research, UNESCO, Paris, 1957.

7 The most complete study of educational exchange in a single discipline is Clifton R. Wharton, Jr. The U.S. Training of Asian Agricultural Economists, Council on Economic and Cultural Affairs, N. Y. 1959.

8 Cf., "The Degree and Its Meaning," Wharton, op. cit., pp. 44-46; van Mook, op. cit., p. 68; Lesser and Peter, op. cit., p. 38.

performance, I sense a renewed effort to assist the foreign student in ways that will permit him to compete on an equal basis with Americans. This is having effects all down the line, but especially in respect to (1) English language competence; (2) greater depth in orientation and post-training evaluation sessions; and (3) renewed efforts to help the foreign student think through the relevance of U. S. training to his home situation.

Experiments worthy of note are being carried out in the field of Economics, including Agricultural Economics. The first is an Economics Institute for Foreign Graduate Students which has been held each of the last three summers, for nine week periods, first at the University of Wisconsin, and then at the University of Colorado. The Institutes are administered by the Institute of International Education, with the assistance of a Policy and Advisory Board appointed by the American Economic Association. They are planned to accommodate about fifty entering graduate students each year. The purpose of the Economics Institutes is to provide newly arrived students with concentrated training in basic economic analysis, and to improve competence in oral and written English. In addition, the program includes an introduction to American life and culture, including the U. S. educational system and how universities operate. The noteworthy feature of this orientation program is, of course, the emphasis it gives to training in a particular discipline, in order to assure that entering foreign students in the field have, to the extent possible, a knowledge and understanding of the field (and incidentally of the operation of the American economy) comparable to that of American students.[9]

With respect to special training in English language alone, there has been a considerable increase of significant effort both in pre-departure language testing of foreign students and intensive short-course training in this country. The largest and best known centers are at American, Columbia and Michigan Universities. However, many other summer institutes have been developed, some by the Institute of International Education with U. S. government support and some, as at N.Y.U. and Indiana, in response to foreign student demand.[10]

Most foreign students realize that much of what they learn in American universities has a western "bias" and they they need to give much thought to the applicability of what they learn here to the home country. The Council on Economic and Cultural Affairs has been sponsoring summer sessions during past summers to help foreign students in Agricultural Economics with these problems, with the assistance of professional staff who have served in underdeveloped economies. The first of these was held at Cornell in 1957, and subsequent sessions have been held at

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[9] "Economics Institute for Foreign Graduate Students, Summer, 1959, June 28 - August 29," Institute of International Education, New York; and "Economics Institute, 1960, Program Outline," June 1960 (hectographed)

[10] In a recent article in the New York Times Sunday Magazine, Delia and Ferdinand Kuhn explained some of the reasons "Why Foreign Students Become 'Cases'." (August 21, pp. 19, 114 -15.) The students of concern fell mostly into the categories of unsponsored, self-financed, and undergraduate foreign students who do not participate in orientation courses or otherwise receive special attention. The typical trainee in Public Administration, however, participates in a planned, sponsored program.

Ohio State.[11] A somewhat similar series of institutes has been held at Vanderbilt University, open to a broader audience, to help departing students synthesize the training they have received around the theme of "economic development." The first of the Vanderbilt Institutes sponsored by ICA, was held in the summer of 1954.[12]

It may well be asked why these experiments have been initiated in the field of Economics, and have not, so far as I can tell, been widely emulated. I suppose that the answer is that, as the field in the social sciences with the most numerous group of foreign students, Economics has felt the pressure of numbers more than others. The Head of the Department of Economics at the University of Chicago, for example, told me not long ago that exactly one-half of the enrollment in his department was made up of foreign students, several of whom were among the ten best students.

Special Arrangements in the Field of Public Administration

Departments of Political Science and Schools of Public Administration have responded to the needs of foreign students and foreign trainees, as far as I have been able to tell, in three principal ways: special counselling arrangements, the holding of special short courses, workshops, and institutes, and by the establishment of special programs, primarily for foreign students, of six months to an academic year's duration.

1. Special Counselling Arrangements. Special advisers to foreign students are frequently appointed in Departments or Schools, if there are a sufficient number to make such an arrangement necessary and desirable. This is most often the case when the University is participating in a special project, such as an Inter-University Contract, bringing larger numbers of foreign students to the campus. As an outgrowth of this arrangement, special informal seminars for foreign students may become established. They may, in fact, be little more than glorified "bull sessions," but they seem to serve a very useful purpose in rounding out knowledge of American government and politics, about views of Americans, about social and cultural issues, and about the peculiarities of the U. S. academic system.

2. Short-courses, workshops, and institutes. These are frequently arranged at the request of the ICA, or another technical assistance agency, when a number of trainees coming from a single country, or even from a number of countries, need special training within a short period of time on such topics as personnel administration, organization and methods, or budgeting. They may be as short as 2 - 3 days or as long as three weeks, but a great deal of ground can be covered when

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[11] Council on Economic and Cultural Affairs, Newsletter, Numbers 1 and 3

[12] Lesser and Peter, op. cit., p. 24

preparations for intensive work have been laid on in advance, and when the participants are fully competent in English. I sat in on a session of one such short-course last spring, on the Financing of Economic Development, in which the participants were from a number of underdeveloped countries. There were obvious problems in communication, which, however, tended to be compensated for by the variety of points of view and the insights that were expressed. This was a "travelling" short course, visiting a dozen or more cities within a space of three weeks (an horrendous schedule!). But it was obvious that travelling this way in a group, and having a definitely prepared schedule in each stop, was an infinitely more effective way to use consultants and guest speakers than to send individuals out on their own. The group members also have the advantage of consulting with one another, and checking on impressions, between stops.

An example of a longer term session was the twelve week Institute in Economic, Social and Industrial Development held at the School of Public and International Affairs of the University of Pittsburgh between May 8th and July 29th of this year. An Institute of this length provides an opportunity not only for a much broader and deeper examination of the many problems in this field, as well as of the literature related to them, but also encourages the kind of communication that is essential if trainees and students are to benefit to the full. On the basis of a visit to the Pittsburgh Institute, I can testify that it was serious business, and that courses of such a length may serve a very useful purpose for short-term visitors and others.[13]

3. Special Programs. There are undoubtedly numerous special programs organized by universities for special audiences.[14] I should like to discuss three of them, aimed at training the general administrator, and which exemplify some of the experience and problems with foreign students in Public Administration.

(a) The New York University-United Nations Program in Administration. This was a one year course, developed cooperatively by the United Nations and New York University, leading to the Master of Public Administration degree. It was primarily the conception of the aforementioned H. J. van Mook and associates in the Public Administration Division in the UN. Mr. van Mook headed up a seminar on comparative administration that served as the integrating device for the program. Trainees were made up primarily of United Nations Fellows, although others were admitted to the course as well. Preference in the award of Fellowships was given to those who had three-to-five years experience in administration in their own countries.

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[13] Graduate School of Public and International Affairs, University of Pittsburgh, "First Annual Institute in Economic, Social and Industrial Development, May 8 - July 29, 1960," (multilithed)

[14] Such as the specialized programs in taxation at Harvard, local government administration at Wayne State University, economic development at Vanderbilt, and business administration at Michigan State University noted in "ICA Work in Public Administration," op. cit., p. 6.

Mr. van Mook developed the teaching materials that were used in the seminar, which was used both as a teaching and a research training device. Administrative systems and operations in the United States, Europe, and the underdeveloped countries were examined and the attempt was made to discover the effect of different cultures on administrative practice. In addition to participating in the seminar, Fellows studied various administrative specialties at NYU. An effort was also made to tap the rich resources of the New York City region for direct observation and analysis of administrative problems.

With the retirement of Mr. van Mook, I understand that the NYU-United Nations Program has now been completed. From talks with those who sponsored it, and some of those who participated, I would judge that it has made a very useful contribution to training.[15]

(b) The Pakistan Project, University of Southern California. This was instituted in 1957 under a three year contract with the International Cooperation Administration and is a series of six-month executive development courses for mid-career officials in the Pakistan Superior Civil Services. The project is designed to demonstrate comparative experience in development and to improve the competence of the Pakistanis in general administration. There have been four six-month courses each attended by an average of 20 Pakistani officials.

Each course is divided into three phases, Group Work, On-The-Job Assignments, and a field trip Laboratory in National Government. Group work consists of group discussions and team exercises, analyzing administrative problems, the appropriate use of methods, and practice in problem-advising exercises. This leads up to a series of team reports comparing an area of administration observed during the on-the-job association. During the latter, the Pakistani Associates are placed in appropriate governmental jurisdictions, chosen primarily on the grounds of effective administrative practice. The Laboratory in National Government lasts about six weeks, during which time visits are made to such bureaus and agencies as the Immigration and Naturalization Service, El Paso; The Tennessee Valley Authority; various Executive and Congressional Offices in Washington; the Port of New York Authority and the United Nations in New York; and, weather permitting, the St. Lawrence Seaway, at Massena, New York.

A final phase of the program is carried out in Pakistan. In January of each year, a small group of USC faculty members visits that country to hold seminars and refresher courses for the "graduates." This novel feature is expected to be particularly fruitful as a means for keeping the Pakistani administrators up to date on developments in the field, and as a means for members of the faculty to assist them further in the future course of their careers.[16]

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[15] Based on interviews with the principals. Mention should also be made of the United Nations Training Centre at Vancouver, opened in 1959 in collaboration with the University of British Columbia. Cf., United Nations, op. cit., p. 49.

[16] University of Southern California, "The Pakistan Project," (printed brochure)

(c) The Public Service Fellowships in Economic Development, Littauer School, Harvard University. Established in 1957, with support from the Ford Foundation, this is an academic year program leading to the degree of Master of Public Administration for Fellows who have served at least five years in administrative capacities in underdeveloped countries. Usually, ten to twelve Fellowships are awarded each year. The Seminars and Lectures which make up the instructional part of the program are open to Americans and others, but the program was designed to meet the needs of underdeveloped countries for advanced training in the administration of economic planning. Harvard's experience in providing a group of advisers, beginning in 1953, to the National Planning Board of Pakistan (Dr. Edward S. Mason, Director of the Program, was the Senior Adviser in this group), was the immediate antecedent of this program.

Three or four courses make up the core of the program, the first two of which are invariably, and the other one or two frequently, taken by the Fellows. The first is a full year lecture course on Economic Development offered by Professors Bell and Papanek; the second, a year-long seminar, offered by Professors Mason and Galbraith, on Problems of Economic and Political Development; the Seminar on Comparative Administration and Economic Development, by Professor Fainsod; and a lecture course on Public Finance in the Developing Countries, by Professor Kaufman. The lecture courses are formally offerings of the Department of Economics.

The Public Service Fellows are required to write an essay on a problem of economic development associated with a country not their own. During the spring of the year, they engage in field trips to various organizations in the United States worked out to meet individual needs and requirements, and frequently including visits to the T.V.A., government agencies in Washington, such as the I.C.A., and the various lending and financing organs, and visits to land grant colleges for an examination of an integrated system of teaching, research, experimentation and extension activities. On the way to their homelands, Fellows take advantage of international travel to visit agencies of interest to development, including FAO Headquarters in Rome, SVIMA (a development project in Southern Italy), The American University in Beirut, community development projects in India, and the like.[17]

(d) Special Training in Inter-University Contracts. Training in American universities as part of Inter-University Contracts deserves special attention. Frequently, through this means, groups of students and/or professors are brought to this country and are given training programs including some or all of the features in the projects described above. These contract groups are especially important from the point of view of this paper, because, more often than not, they are directly associated with the development of an indigenous educational or training institution in the field of Public Administration, or Business and Public Administration.

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17 Harvard University, Graduate School of Public Administration, Dean's Report, 1956-57, 1957-58, and 1958-59.

This is not the place, however, to go into an extended discussion of the operation of Inter-University contracts. To do so might intrude on an area of discussion that Dr. Weidner will undoubtedly wish to take up. I should hope that we will be able to discuss, however, whether sufficient attention is given to analyzing the experience of American university contract groups abroad; whether, on the basis of this experience, we are developing a better strategy of assisting indigenous institutional growth in the field abroad; whether, in the U.S. we are giving sufficient attention to Ph. D. level training for faculty members in Administration abroad, and to their need for special research training; whether American Public Administrators are giving attention to raising the prestige of education and educators, their status and pay-scales, in fact, in assisting in educational administration, in general, in the underdeveloped countries? All these things, I take it, are bound up in the advancement of education and training in the field of Public Administration abroad.[18]

There is one aspect of the participation of U.S. universities in Inter-University Contracts that has direct relevance to the training of foreign administrators. This is the breadth of experience that has accrued to American faculty members in the affairs of underdeveloped countries. The exposure to the underdeveloped countries that the contracts, and other similar international experiences have afforded, while not always as deep and intensive as might be hoped, has been an important factor in preparing the U. S. faculty member for dealing more adequately with the problems of foreign students on the home campus. These experiences have also stimulated research interests that have made an important contribution to the growth of the field.

To attempt to evaluate any or all of the special arrangements that have been described above, would go well beyond the scope of this paper.[19] Moreover, I would not want to leave the impression that I have attempted to cover all programs that are currently being offered. I would, however, like to point out certain common characteristics that the programs described have, and which may be considered as major trends in the university training of foreign administrators in the United States.

1. The special programs have been established for the training of mature and experienced administrators, usually those who have had at least five years in the administration of their home countries. The emphasis is not only on training at the graduate, as opposed to the undergraduate level, but on the selection of trainees who are more mature and experienced than those normally found in U.S. graduate schools.

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[18] The international activities of U. S. universities have been studied under a grant from the Carnegie Corporation, at the Institute of Research on Overseas Programs, Michigan State Univ., directed by Dr. Edward Weidner. Publications include International Programs of American Universities, 1958, and International Exchange Programs of American Universities, 1960, both published by the Michigan State Univ. Press, East Lansing. Other studies include U.S. university cooperation in Indonesia, India, Japan and Latin America.

[19] There have been relatively few formal evaluations of Fellowship and Trainee Programs. Cf., United Nations, Bureau of Social Affairs, "Evaluation of the Programme

2. Hand-tailored academic programs have been necessarily developed to meet the needs for training foreign administrators. These are almost invariably of an inter-disciplinary nature, usually involving cooperation between Administration and Economics, and frequently, in addition, such fields as Anthropology and Sociology. Considerable emphasis is given to methods of problem-formulation and problem-solving.

3. Observation and study tours of American organizations are a necessary part of the training process, representing the quickest and most effective means for getting a "feel" for comparable American practice. Observation and study of other foreign organizations, important in the field of international development, is of equal importance. In both cases, arrangements stop short of administrative internships.

4. A considerably greater priority is attached to the training of practicing government servants from the underdeveloped countries than to the training of teacher-scholars, though the latter has been a consideration in Inter-University Contracts, and in some of the Fellowships awarded by the United Nations and the Ford Foundation. The normal maximum period of training is one year, and the normal degree is the Masters in Public Administration.

It is apparent from this listing that many but not all of the needs of foreign students and trainees in Public Administration are being met by arrangements in effect in some universities. Except for the special counselling arrangements noted, the field relies largely on the general arrangements for assisting in social and cultural adjustment, and in language training, provided by the University community. There is little special instruction for foreign students in Public Administration of relevant aspects of American history and government, or in the framework of American social, economic, and political institutions in which American public administrators operate. The informal observation and study tours that are relied on instead, are relatively brief and lack depth. The few real attempts at "follow-up," after the return home of the trainee, indicate that this could be a promising area for future work. Many of these comments indicate shortcomings that are the normal consequences of short-term assignments, or even of training of a full year.

Comparatively little priority has been accorded to the development of training programs to meet the special needs of foreign teacher-scholars in Public Administration, lasting two, three, or more years, and to which reference was made at the beginning of this article. These would include research training on problems of administration in developing societies, and would include opportunities for data collection and field research in the home, or a related underdeveloped country. The possibility of field supervision of such research by "returned alumni" and by faculty members or other professionals serving in the field, might be explored. The contribution that indigenous teacher-scholars so trained can make to the future development of the field is already becoming apparent, but efforts to develop this contribution to the full have yet to be exploited.

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19 Cont. of Advisory Social Welfare Services, 1947-51," (E/CN.5/266/Rev.1) 21 Nov. 1952. The ICA recently made, through the Foundation for Research on Human Behavior, an evaluation of participant training in the Philippines. Cf., "Using U.S. Training in the Philippines: A Follow-Up Survey of Participants," Vols. I and II, May 1959.

Growth of the Comparative Aspects of the Field

It is obvious that the ability of the field of Public Administration to offer effective training to foreign administrators is ultimately dependent upon its scope and content. It is also clear that the attempt to contribute to the development of underdeveloped countries, including training, is influencing the growth of the field. The introduction of international content to the field is, however, a very recent development. For example, the first seminar dealing primarily with an international subject matter at the Littauer School was introduced in 1940-41.[20] In most departments and schools, courses bearing on an international aspect of administration are a post-World War II development.

Most of the current developments of interest can be grouped under the broad heading of Comparative Government or Administration. There is space here to mention only a few. The Committee on Comparative Politics of the Social Science Research Council has broken new ground in the discipline by developing a new framework for the comparative (and functional) analysis of the political processes -- including administration -- of the developing areas. The first major published work of the Committee, The Politics of the Developing Areas[21] is a landmark of scholarship in this field. This is just one example of the yeasting of new ideas and concepts currently subject to discussion and testing. Others are being spawned in the new seminars on comparative administration and development that are a distinguishing feature of the current growth of the field, including those at Harvard under Professor Fainsod, already mentioned; at Yale, under Professors Sharp, Kaufman, and Fesler; at Cornell, under Professor Bent; at Oregon, under Professors Wengert and Mikesell; and at Indiana, under Professors Caldwell and Riggs, among others. The last of these produced one of the early volumes in the field, Toward the Comparative Study of Administration.[22] Also indicative of the growing interest and work in this field in the United States is the special issue (June 1960) of the Administrative Sciences Review on the theme of Comparative Administration.

Research programs at the Maxwell School, Syracuse University, have taken a slightly different direction, as marked by the well-known work of Dean Cleveland and associates, and by the recent publication of the important volume on The Overseas Americans.[23] Also, a number of faculty members at the Maxwell School will,

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[20] Harvard University, op. cit., 1958-59, p. 9

[21] Gabriel A. Almond and James S. Coleman, eds., The Politics of the Developing Areas, Princeton University Press, Princeton, December 1959.

[22] William Siffin, ed., Toward the Comparative Study of Public Administration, Bloomington, Indiana University Press, 1957.

[23] Harlan Cleveland, Gerard Mangone, and John Clarke Adams, The Overseas Americans, New York, McGraw Hill, 1960.

during the next five years, be associated with colleagues at Syracuse in the fields of Business Administration, Engineering, and Education in a program of research, supported by the Ford Foundation, on the theme of Cross-Cultural Operations. This signifies the special involvement and role that Americans play in the administration of overseas technical assistance programs. It may be considered unusual to mention research on training Americans for overseas service, in a paper on the training of foreign administrators in the United States. But I suppose it is obvious that, in many respects, the first problem is the obverse of the second.

No account of recent trends in the field would be complete without reference to a new approach termed Development Administration. Dr. Weidner and his associates at the Michigan State University are currently engaged in a research project in this field, with financing from the Rockefeller Foundation, and it may be that he will wish to discuss this subject in his own paper. I would, however, like to refer to certain implications that are already being drawn from this concept for the training of foreign administrators. In a report prepared by Irving Swerdlow concerning the curriculum of the new Pakistan Administrative Staff College, with which Syracuse will be associated in an advisory capacity, under a grant from the Overseas Development Division of the Ford Foundation, the following salient points are made:

1. Public Administration in a country that concentrates heavily on economic development, and on the social and political changes that make it possible, is significantly different, at least in emphasis, from Public Administration in more economically advanced countries. The training of public administrators, as a consequence, should probably emphasize several new requirements.

2. The first of these is the importance to Public Administrators of an understanding of economic forces and relationships involved in a rapidly developing economy. These include, among others, monetary and fiscal policies and their relation to economic growth; the role of foreign exchange; cost and productivity analysis; the role of public and private credit, and the like.

3. The second is the comparative politics and administration of development programs. While it is recognized that each underdeveloped country is unique, it is believed that there is a great deal to be learned from the administrative experience of underdeveloped countries attempting to meet roughly the same kinds of administrative problems.

4. Finally, there is the requirement that Public Administrators learn to stimulate and encourage a spirit of innovation and creativity, on the one hand, and to gear procedures and regulations

> to change rather than conservation. These are matters that are most difficult, yet it is merely the recognition of the need for a special kind of creativity in Public Administrators which needs "to be encouraged and stimulated as much as the widened creativity in technological innovations necessary for economic development."[24]

Although I agree that Public Administration in an underdeveloped country is likely to have many special aspects, it would appear that the above listing has much relevance for Western administrators as well. Many people, in fact, believe that the concept of development administration is applicable to Western society. It is not surprising perhaps, that a discussion of recent trends in thought and investigation in Comparative Administration would turn again to the requirements of training foreign administrators. It would seem important to stress the relationship of research and training in this field, and of the potential, previously referred to, for collaboration in research between Americans and foreign nationals so trained. In a somewhat similar fashion, new trends of thought have had ramifications on the organization of universities.

Institutional and Organizational Implications

The growth of interest in U. S. universities in overseas development and administration has in some universities required the establishment of new organizational arrangements. Although the training of foreign administrators is only a part of this interest, the ability of the universities to provide effective training is strengthened by these arrangements. Notable examples are the new School of Public and International Affairs at the University of Pittsburgh, with its special interest in the administration of economic and social development; the School of International Service, at American University, with its interest in providing advanced training for overseas service in a number of fields; and the Institute of International Studies and Overseas Operations at the University of Oregon, with its special interest in relating economic foreign policy and the administration of overseas technical assistance. At Michigan State University, the process has gone even further, and an experiment in "university-wide involvement" in international affairs is going forward. Under the coordination of a central Dean of International Studies, Assistant Deans of International Studies are being appointed in several of the colleges and professional schools, including Agriculture, Business and Public Administration, and the Liberal Arts College. At other universities, some of the same objectives are sought through the modification of established forms. Political Scientists and Public Administrators are playing prominent parts in these developments. Perhaps more to the point for present purposes is the fact that these arrangements are bringing the field of Public Administration into closer contact and communication with a number of other public service fields in which the most numerous groups of foreign students and trainees are being trained. These include Engineering, Educa-

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[24] The Maxwell School, "Discussions Concerning the Project for a Pakistan Administrative Staff College, Notes on a Conference . . . July 9-10, 1960," pp. 4-6 (hectographed)

tion, Agriculture and Public Health. This holds the promise of developing a new and more fruitful cooperation between Public Administration and such fields for the training of foreign administrators. A relationship of this kind has always been needed with respect to training for administration at home, but the urgency of assisting the underdeveloped countries has apparently opened up new possibilities along these lines. However, this is mostly a promise for the future.

Summary and Conclusions

In this review of the training of foreign administrators in the United States, I have concentrated on the role and contribution of American universities, and on the special efforts of the field to meet the social and cultural, and the intellectual and professional needs of this group. Trends in the growth of the field and in its organization have been described. They have an obvious bearing on the relevance and on the scale of the contribution of the field to development. It remains to be seen whether the special efforts made to date have set a pattern that others can learn from and build on, or whether, on the other hand, the widespread experimentation that has marked the past decade needs to be continued and accelerated.

In connection with research trends in the field, some of the work noted seems to be building toward a much needed theory of the role of administration in development. There are two traditional perspectives from which to view this role, that of the underdeveloped countries themselves, and that of the United States and other western countries, as they contribute to development. But perhaps equally important is the construction of a framework in which the mutual contributions and interactions of each could be traced and projected. This is the perspective of the developing community of non-Communist nations.

One interpretation of the institutional and organizational changes in the field is that they are part of a broader need to redefine the role of the American university in world affairs. An aspect of this need is of special concern to Public Administration. How can the American members of the profession best participate with colleagues in the developing countries to establish and promote indigenous research, educational, and training institutions? How can cooperative relationships be developed and maintained over a long period of time?

Looked at in either context, the healthy growth of the field, and the extent to which it can further develop its potential for service to society, is dependent to a remarkable extent on the growth and maintainance of these colleague relationships across cultures. That is why, in my opinion, the training of teacher-scholars of Administration is important, and deserving of priority in the training of foreign administrators in the United States.

THE JUDICIARY AND THE LOCAL POWER STRUCTURE: AN INTEREST GROUP APPROACH

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960.

I.

Emphasis on one aspect of a subject as broad as the part of courts in the governance of communities in the United States should suggest that other aspects merit close study, not neglect, and that there are many approaches to the subject, not one. This paper will center on the courts as arbiters between community wishes as expressed in ordinances and defended by municipal corporation attorneys and various local, state and national organizations, on the one hand, and private interests challenging local governments, on the other hand. The law suits that arise reach a range of courts applying state and federal statutory and constitutional standards in their oversight of municipalities.

This interest group approach follows the tradition of legal realism and emphasizes the political impulses behind litigation and the political results of judicial decisions rather than the arguments, reasoning and doctrines of law in cases. We are interested in the effect of judicial decisions on the distribution of power in communities. Take as an example the recent cases testing the authority of local zoning boards. In Senior v. New Canaan Zoning Commission[1] the Connecticut Supreme Court of Errors in 1959 held constitutional the upgrading of lots in a residential semi-rural zone from two to four acre minimums. The decision met with mixed reaction throughout Fairfield County. The Court noted in its opinion that "The town of New Canaan, as of the 1950 census, had the highest per capita income of any town, village, or city in the United States."[2] It was not

surprising to learn that the First Selectman of New Canaan described the ruling as beneficial. "It is good for the town to keep its prestige in a major suit of this kind," he said. There was general agreement that "the decision strengthened the power of zoning boards to decide the character of their communities." More recently House and Home has said that the U.S. Supreme Court's refusal to hear the arguments in the New Canaan Case "is seen as strengthening the power of zoning boards generally."[3] Civic groups in other communities were encouraged to fight further for similar zoning for minimum lot area. It was also recognized that such zoning worked hardships on lower-income groups and believed by some that it prevented an orderly population growth. The effect of the Court decision upholding 4-acre minimum lots was also said to be an increase in price of existing 2-acre lots which were comparatively scarce. Quite certainly the courts which considered this case dealt with legal issues that touched not only the distribution of power within one community but in many similar suburban places and in central cities, as well. This was true for the Court of Common Pleas which, in the first instance, declared the zoning ordinance unconstitutional. It was also true for the Connecticut Supreme Court of Erros which reversed that decision and the United States Supreme Court which, on May 21, 1960, dismissed the appeal.[4]

The pressures for and against acreage, or snob, zoning (called "Ivy League socialism" by Dean Jefferson Fordham of the University of Pennsylvania Law School)[5] came to the surface in a case brought by a construction company against Easttown Township, a main-line suburb of Philadelphia.[6] There a 1940 ordinance provided that a minimum lot area in an "A" residential district should be one acre, with a minimum frontage of 150 feet. The court test was begun when the applicant sought to build a dwelling on a site slightly less than a half acre, with a frontage of a 100 feet. The Easttown Township Board of Adjustment refused to grant a variance and this decision was supported by the Chester County Court of Common Pleas. The Supreme Court of Pennsylvania first reversed the lower court, by a vote of 6 to 1 on June 28, 1957, then granted a rehearing, vacated its order, and in a final order, on May 27, 1958, reversed itself by a 4 to 3 vote, and ruled the order of the Board of Adjustment to be valid. By the time the case reached reargument the defense of acreage zoning by Easttown Township and its Devon Citizens Association was supported by the amici curiae by the Home Builders Association of Philadelphia and the Home Life Insurance Company.[7]

In stressing the organizations in a case there is danger of neglecting other important considerations. This is the problem of any interpretation built around a single approach. But the objective is understanding not a complete explanation that would satisfy all social scientists and lawyers at once. Very

important new doctrine may be found in the Easttown Township decision when the Pennsylvania Supreme Court ruled that the regulation need only have a substantial or reasonable relation to health, safety, morals or the general welfare. This seemingly went against Dillon's rule in holding that the presumption of constitutionality of an ordinance is as strong as that attending an act of the legislature.[8] With this and other decisions the importance of doctrine is assumed but the interest group environment in which these cases are decided is stressed.

In exploring the group nature of the litigation which gives rise to judicial decisions affecting municipal governments I shall first describe the side of government and, perhaps underplaying the role of the attorney for a municipality, tell of some organizations which stand behind him. Here is the defense of municipal power and the policies favored by the majority. Considering the values of local rule it is heartening to see that this defense is often well made. Then I shall identify groups which have lost out in municipal decisions and turn to the courts for relief. Considering that many of their cases are brought to protect citizen rights it is impressive that these groups bring zeal, skill, and money to litigation. Thus the place of courts in municipal power structures will be reached indirectly.[9]

II.

Although the defense of actions by municipal corporations is formally in the hands of their chief legal officer, titled variously corporation counsel, law director or city, town, village, borough or county attorney, this work has been aided since 1935 by the National Institute of Municipal Law Officers. Known by its initials, NIMLO was an off-shoot of the United States Conference of Mayors though always an independent organization. Its headquarters are in Washington where a full time legal staff is maintained under Charles S. Rhyne, who has served as director since 1939. Its members are 1200 American municipalities which rely on NIMLO as a collective center for their varied legal experience. A description by NIMLO shows it to be supported entirely by the annual membership fees paid by member cities. Interestingly, this tells that "information collected and on file in the Washington Office is never used by, nor made available to, any person other than an attorney for a NIMLO member so that there is no possibility that this material will be employed against the cities which have collected it."[10]

NIMLO represents a kind of perfect expression of a paradoxical development--the nationalization of municipal law. It aids the busy municipal attorney "who needs the strength flowing from joint support of many municipalities in instances where the protest of a single municipality would be ineffective." Or, put another way by NIMLO, "furnishes an effective agency through

which municipal attorneys can take joint cooperative action on Federal legislation and on any other matter of nation-wide consequence to municipalities on matters in Washington, D.C., with great effectiveness." NIMLO offers many services but two activities may be identified as directly shaping the legal position of municipalities: drafting model ordinances and defending them by briefs in the Supreme Court of the United States.[11]

The very idea of model state constitutions and legislation, model city charters and ordinances has not been much explored. The phenomenon is very well known and accepted for on its face it is easy to understand as necessary in a nation of fifty states and thousands of lesser governmental units. Yet the folklore of American government must yield a bit when it is realized that much modern local legislation has been drafted in Washington! At any rate, the NIMLO Model Ordinance Service is followed closely by most municipal law officers in advising local councils in the enactment of local legislation. The Service is in a loose-leaf binder to facilitate constant revision and supplementation and "each model ordinance has tried and proven provisions with citations to the special studies or leading court decisions upon which it is based." And it may be truly said that "many of these model ordinances have already been adopted by hundreds of municipalities."

If a "test case" is one whose outcome will affect interests beyond those of the parties in the dispute then NIMLO's frequent interest in municipal ordinance litigation is to be expected. In the bulk of instances cases involving model ordinances are settled at the state level and are prepared by the law officers of member municipalities. For example, in 1950 the NIMLO Model Sound Truck Ordinance, which had been adopted by the City of Allentown, Pennsylvania, was upheld by the Pennsylvania Superior Court.[12] The case for sustaining the ordinance was made by the city solicitor of Allentown. The lower court's holding was affirmed by the State Supreme Court and an appeal from this dismissed by the United States Supreme Court. When cases involving member municipalities come before the Supreme Court, NIMLO may take action in two ways. The organization may provide assistance to the city law officer in charge of the case by making suggestions on the brief or on the approach to the oral argument. On occasion Charles S. Rhyne, Director of NIMLO, may join as a joint author of a brief for a municipality.

The second form of NIMLO support in court cases is by amici curiae briefs, an activity which seems to be flourishing nowadays. At least most of NIMLO's amici briefs have been in cases during the last three terms of the Supreme Court. There are nine cases which NIMLO has entered in this way. Of these, seven have supported city efforts to obtain lower gas and utility rates and two have involved municipal inspection practices.[13]

NIMLO, as a kind of semi-governmental institution, acts with decorum and restraint in its work of ordinance design and defense. But, occasionally, an ally in extending and justifying municipal power may beseech the courts to act right by supporting a pet policy aim. A current example may be seen in criticisms of courts by supporters of urban renewal and slum clearance programs in American cities. Last fall the Cleveland Plain Dealer addressed the courts editorially in this tone:

> "Frankly, we think the municipal judges who now try these cases have not given enough thought to the cancer which slums and rank overcrowding have created in this city. In our view, there consistently are too many postponements and too many suspended fines... This wrist-slapping business must be stopped, for what's the use of hiring new inspectors and putting through a stricter housing code if the court doesn't follow up the good work?"[14]

This point of view was applied to courts in other cities this spring by the National Association of Housing and Redevelopment which criticized judicial leniency in Cincinnati, Dayton and St. Louis.[15] In those cities courts rejected evidence of violations obtained during inspections without search warrants. On June 20, 1960, a 4-to-4 tie vote in the United States Supreme Court let stand the arrest of the Dayton homeowner for refusing to admit a housing inspector without a warrant.[16] The defense of the Dayton ordinance permitting such inspections was led by Charles Rhyne in cooperation with the city attorney and NIMLO filed an amicus curiai brief in support, also. However, the tie vote has no force or precedent, so this particular problem is not yet ended.

NIMLO protects local law in the courts as a matter of routine and as a primary obligation. There are other organizations, established to serve the interests of local government, which participate in law suits only occasionally. Thus, the United States Conference of Mayors has been involved in only one case since its founding in 1934. As an organization of Mayors of approximately 300 cities with a population of 50,000 or more the Conference in 1957 filed a brief amicus curiae supporting a petition by Mayor Hartsfield of Atlanta requesting the Supreme Court of the United States to consider the constitutionality of the Georgia County Unit Primary.[17] This brief contended that this system "represents a systematic discrimination against, and continuous debasement of, the political voice and position of municipalities and their citizens." And, "State Governments controlled by self-perpetuating rural minorities systematically discriminate against the interests of municipalities and their citizens." The Conference therefore entered its brief in order to place the Georgia County Unit Primary

"in the larger context of urban underrepresentation." However, the Supreme Court denied review. It is fair to conclude that the United States Conference of Mayors ordinarily finds better expression of its goals than through litigation.

In contrast, the state leagues of municipalities act much more like NIMLO for, among many activities, they prepare codes of model ordinances appropriate in a single state and especially for smaller communities. These organizations also represent the interests of their member municipalities before state legislature, administrative agencies and courts. In a typical state, for instance, the League of Wisconsin Municipalities filed eight amici curiae briefs in state supreme court cases during the past decade.[18] Ordinarily the preamble of such briefs explains that "the disposition of the matter before the court is of vital concern to all Wisconsin cities and villages." It is this judgment that the executive committee of the League applies in authorizing that a brief be submitted on behalf of its members. In Wisconsin the cities and villages which are members now number 492. State municipal leagues often decide whether to file briefs in cases partly on its view of the competence of the municipal corporation attorney for it continues to be a great irony of our judicial process that great principles affecting many interests not heard in a lawsuit may rise or fall in a quietly pursued litigation. The organizations that support the work of city law officers are understandable developments in this system of law making.

Thus far I have assumed that municipal corporations have enough in common to join together in common defense when there are law suits questioning their powers, policies and procedures. This view is supported by the program of The American Municipal Association, the national organization of the various state municipal leagues, which speaks of "the national municipal policy" which guides their activities. But while there are broad areas of agreement the differences in the size, location, financial condition and outlook among American communities are surely reflected in these organizations. Accordingly, the larger cities in a state are frequently at odds with the public position of their municipal league. And, no doubt, The American Municipal Association does not feel as strongly about the need for reapportionment as does the United States Conference of Mayors. Certainly the litigation in which these groups are active reflects their different constituencies and outlooks.

Turning to the single municipality and its attorney one finds some well-established differences. Litigation for a large city is proportionately much greater than for a smaller place though rate of growth is a factor of importance. Tax and liability cases bulk large in this work while annexation and related issues shows up in the legal business of a growing place.

While national and state organizations of government officials often contribute to the defense of municipal corporations in the courts, municipal law officers do not depend solely on this support. Political scientists should give attention to this office and the political factors which condition its conduct.

To the extent that local government policy is set by organized interests in a locality then the defense of that policy in the courts is also a defense of those interests. There are many instances where this private interest is given ample chance to speak officially in support of the policy. In Dean Milk Co. v. Madison,[19] the city of Madison was represented throughout the litigation by the city attorney and an attorney for the Madison Milk Producers Association, as well. In Zorach v. Clauson,[20] the city of New York was represented by its own counsel and by an amicus brief by a city-wide committee of Protestants, Catholics and Jews which favored released time from the schools, for religious instruction. When the Borough of Rutherford, New Jersey wished to defend distribution of Bibles in the public schools it accepted the support of the Gideons International as intervenor to defend the policy in the courts and carry the costs.[21]

The frequent judicial defeats of states and municipalities a generation ago was attributed by Justice Brandeis to inferior public counsel. He felt over and over again that attorneys representing private interests were abler men than those representing cities and states. It is hard to make a comparison today. No doubt the organizations of public officials, especially the National Institute of Municipal Law Officers, the state leagues of municipalities, and the National Association of Attorneys General, have provided vital skill in support of individual public law officers in crucial legal tests. Private supporters also volunteer legal aid to governments in court cases. Abler men, larger staffs and bigger budgets today enable cities to defend themselves in the courts to balance adversory proceedings which tend to be lopsided when superior private counsel is employed.

III.

Strong feelings of aggrieved parties, the devotion of able attorneys and associations of persons similarly situated go together in many of the best known actions against state and local government in recent years. In the city of New York, and elsewhere increasingly, a substantial part of the cost of operating the law department is due to the defense against "sidewalk injury cases." Last year the NIMLO Municipal Law Review reported that perhaps the most important problem of the municipal attorney is the question of tort liability. The

report said:[22]

> "This (condition) appears to be particularly true when consideration is given to the number of claims being presented, the large amounts now being awarded in damages, the often lack of funds with which to pay the same, the inability to secure adequate, if any, public liability insurance, and the removal by the courts and legislatures in various states of the municipalities' immunity from tort liability when acting in a governmental capacity."

The assault on the doctrine of municipal immunity from tort liability has been led by the National Association of Claimants' Compensation Attorneys. The 7,000 members of this nation-wide bar association, known as NACCA, are no doubt, the most zealous, hardest working, best paid lawyers in the country. NACCA was founded in 1946 and, through national and regional conferences, reports and the NACCA Law Journal, the organization has stimulated and applauded a sensational trend toward bigger and better damage suits.

The opposing interests caught up by this trend are pointed up by the reaction of NACCA and NIMLO attorneys to the lifting of municipal immunity from tort liability by the Supreme Court of Florida in 1957 in the case of Hargrove v. Town of Cocoa Beach.[23] This was an action by a widow against the municipality for damage for the alleged wrongful death of her husband who died of smoke suffocation in an unattended jail. (The court report says the "husband was incarcerated in the town jail while in a helpless condition because of excessive intoxication.") The trial judge dismissed the complaint on the theory that the town was immune to liability for this type of tort. On appeal, the Florida Supreme Court reversed and receded from its prior decisions holding a municipal corporation immune from liability for the torts of police officers. Positively, the court held "that when an individual suffers a direct, personal injury proximately caused by the negligence of a municipal employee while acting within the scope of his employment, the injured individual is entitled to redress for the wrong done."[24] The court reasoned that the immunity doctrine was inappropriate in a modern, urban democracy where the city "is in substantial measure a large business institution." In departing from the rule of municipal immunity, the Florida Supreme Court explained that its conclusion had "not been hastily formulated" and added: "The matter was thoroughly briefed and argued by counsel for the parties. At the invitation of the Court, the Florida League of Municipalities filed briefs and through counsel ably presented the matter amicus curiae."[25]

At the next annual convention of the National Institute of Municipal Law Officers, the city attornty of Pensacola reported

that this opinion was most alarming and there was general concern that such judgments could "financially cripple any city or village at any time."[26] The Pensacola city attorney's comments were uttered with some humor and, while it may be unfair to take them at face value, a quotation will reveal something of the spirit of one official faced with the prospect of damage suits in the future.[27]

> "...on leaving my home in Pensacola the other day I picked up a newspaper and read that in Miami a circuit court jury had returned a verdict in the sum of $23,000.00 because a man's arm was broken while he was being arrested. Of course, that's Miami. (Laughter.)
>
> "...We look with a great deal of fear and trepidation to the decision in the Hargrove case in Florida particularly so in the Miami area where the verdicts are so fantastic. I hope that in the Northern part of Florida where the real Southerners of Florida live that they will be much more practical in their verdicts in the event that we have such a thoughtless officer on our police department as to break a man's arm when he is drunk. (Applause.)"

In contrast, a note in the NACCA Law Journal praised the decision of the Supreme Court of Florida in the Hargrove case as "commendably repudiating the indefensible rule of municipal immunity from tort liability."[28] Municipalities were described by the claimant's compensation attorneys as "one of the best loss-distributing units of society." The note said simply, but in emotion-charged words, that the immunity rule was "barefaced injustice." The NACCA position may be summed up as follows:[29]

> It is better that the losses due to the torts of city employees should fall upon the cities and for the latter to bear the cost of such casualties than upon the innocent victim of 'official' torts. Such losses should be regarded as the social cost of administering government, spread over the citizenry by the tax device, rather than have the cities partially subsidized by the coerced contributions of their victims.

This view appears to be gaining popular and judicial acceptance. Without straining its implications too greatly one can see the obligations of local government and the tax burden growing through this judicial change of heart brought about, at least in part, by the zealousness of NACCA, the National Association of Claimants' Compensation Attorneys.

Public education is important as a budget item and as a political issue in American communities. Many organizations have drawn the judiciary into the consideration of various aspects of local school affairs. Racial segregation was outlawed in cases initiated in this way and we are now well through the first decade of follow-up litigation to bring practice into conformity with constitutional doctrine.[30] Court tests of school activities offensive to different religions have come up frequently in the past twenty years. The Commission on Law and Social Action of the American Jewish Congress this summer began a test of religious practices in the schools of Miami, Florida.[31] The Flag Salute Cases[32] of the Jehovah's Witnesses, supported by the American Civil Liberties Union, finally upset the wishes of local school boards in West Virginia and elsewhere. Protestants and Other Americans United for the Separation of Church and State has begun many cases to end public school benificenses to Catholics and Catholics have questioned practices offensive to themselves.[33]

In 1933, well before this spate of cases on race and religion, an authority on the legal basis of school organization and administration wrote that "the relation of the school to civil society, on the one hand, and to the individual, on the other, is nowhere so well defined as in the great body of decisions rendered by the highest of our state and federal courts."[34] Since then, outside control of education has advanced as an activist judiciary has applied new tests to local practices. Of course, there is disagreement over whether these decisions are different from those in the first part of the century which Justice Holmes condemned because they prevented "the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States."[35] Edward S. Corwin believes that these issues are alike. After the decision in the McCollum case in 1948 outlawing released time practices in the public schools of Champaign, Illinois, Corwin said: "In my opinion the Court would act wisely to make it clear at the first opportunity that it does not aspire to become, as Justice Jackson puts it, 'a super board of education for every school district in the nation.'"[36] Whatever ones view may be there can be no denying that court decisions are having important ramifications in the educational life of American communities.

IV.

I am sometimes led to think that interest groups are even more important in the courts than in other governmental forums. The courts have little power of initiative; legislative and executive bodies have much. The business of courts is the business of others and the cases which constitute the politically significant portion of that business are supported by organized

interests. Courts are not absolutely helpless in determining what cases come before them but they have far less internal control over what their work shall be than do legislatures and administrative agencies. The starter of the formal judicial process lies outside the judiciary in the hands of those who care to litigate. The starter of the other governmental processes lie inside the appropriate institution. So many factors enter into the final decisions of judges, legislators and administrators that it is wrong to think pressure groups by themselves could determine the outcome in any branch of government. But at the crucial first step of access organizations seeking a remedy in the courts have great initiative.

Among all litigants those who challenge municipal action perhaps have the easiest path. In conformity with "Dillon's rule," the powers possessed by municipalities are ordinarily interpreted in a restrictive way by the courts.[37] The troubles of municipal corporations are increased by the procedures of state courts which make them far easier marks than federal courts. Friendly suits are common. Advisory opinions are rendered in many states. The declaratory judgment is more fully developed. Class actions are permitted more readily. The rules for amicus curiae and intervenors are less stringent. Above all, the "taxpayer's suit" stands as a symbol of the many procedures by which state courts have been brought to exert such power over local government. This device led Sayre and Kaufman, in their study of New York City, to conclude that courts "offer nongovernmental groups in the city a chance to influence officials in the other branches indirectly when they cannot do so directly."[38]

"Taxpayers' suits" satisfy the jurisdictional requirement that plaintiffs have standing to sue.[39] Normally, this requirement means that the plaintiff must sustain specific personal injury before he is allowed to go to court. However, municipal action in virtually every state may be tested under this relaxation of the "standing" doctrine where a plaintiff's status as a taxpayer "has been held sufficient to allow damage to him which is shared equally with all members of the public to form a judicially cognizable issue."[40] A taxpayer's suit has been defined as "a representative class action in equity, brought on behalf of all taxpayers against officials of the governmental unit challenged."[41] In practice, the word "taxpayer" has been treated so loosely that a group of persons wishing to question governmental action in the courts need only find the money and a nominal plaintiff to do so. This is why "taxpayers' suits" have functionally become "citizens' suits."[42]

The recent Yale Law Journal survey shows that the objectives sought by plaintiff-taxpayers have varied widely with the following in order of importance: (1) challenges to the use of the eminent domain power in connection with slum clearance, housing,

highways, airport, and other public works projects; (2) attacks on the constitutionality of various methods of bond financing used by municipalities to circumvent limitations on indebtedness; (3) cases questioning the granting of franchises or licenses which represent public approval of privately owned but publicly used facilities; (4) efforts to withhold salary payments to civil servants who hold office in violation of statutory standards; (5) challenges to sales or donations of the public domain to private parties; (6) cases to achieve civil liberties objectives such as the prevention of expenditures for illegal methods of law enforcement or expenditures which would violate the separation of church and state; (7) suits to reapportion election or judicial districts.

Taxpayers' suits were first allowed by American courts just prior to the Civil War but did not reach a great volume until the end of the nineteenth century. Then in the Populist and Progressive periods a number of devices of democratic intent were fashioned to cope with entrenched officials and vested interests. In this connection the taxpayer's suit should be linked with the initiative, referendum and recall as a symbol of the era. In this century the taxpayer's suit has been one of the chief weapons in the arsenal of the good government movement. Only this year the editor of the Madison, Wisconsin Capital Times, whose roots are deep in the LaFollette movement, established a special fund of $10,000 to be used, as he said, "in the protection of the public domain which is being raided periodically by private interests at the expense of the public interest." He said that this fund would allow his newspaper "to start a taxpayer's suit where we believe that the state's lakes, rivers, streams, forests and parks are being taken over by private interests for private profit." Similarly, the Citizens Union of the City of New York, described as "probably the most widely known and influential organization among the city's multitude of nongovernmental groups," and with origins before 1900 in the good government reform movement, has begun numerous taxpayer's actions throughout its history. Its activity in the courts has also taken other forms and has varied with the character of the local government. During the administrations of Mayors John F. Hylan (1918-1925) and James J. Walker (1926-1932) the Citizens Union brought some 19 lawsuits to restrain illegal expenditures of public funds and was successful in about 12. The present counsel of the Citizens Union said recently that in the last few years he had "brought some half dozen suits to restrain various governmental actions which we believed to be illegal. In addition, the Citizens Union occasionally intervenes, by leave of the court, as amicus curiae or friend of the court, in suits brought by others." This use of taxpayers' suits by one newspaper and one civic organization is indicative of practices throughout the country.

The situation created by this easy access to the courts has been described by the Yale Law Journal in the following way:

> ...Such litigation allows the courts, within the framework of traditional notions of "standing," to add to the controls over public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts. Taxpayers' suits also extend the uniquely American concept of judicial review to legislative action by allowing minorities ineffective at the ballot box to invalidate statutes or ordinances on constitutional grounds . . . Taxpayers' suits thus create an army of potential private attorneys general acting on whatever private incentives may induce them to spend the time and money to bring a taxpayer's suit: . . . And since group financing of such litigation is not infrequent, taxpayers' suits also mobilize various voluntary associations seeking private, economic, or social objectives to further law enforcement and prevention of corruption in government.

The objections to the widespread use of taxpayers' suits are numerous. Even when unsuccessful the delay occasioned by such actions "may unduly obstruct the completion of public projects." These suits may harrass officials and immobilize local government thereby inhibiting progressive community action. But most important of all, "taxpayers' suits may push the concept of judicial review of legislative and executive action too far." The common complaints about judicial review merit repeating:

> By calling upon the courts to sit in judgment of decisions taken by the political branches of government, when no one is sufficiently injured thereby to have standing as an individual, taxpayer litigation may undermine the independence and prestige of the judiciary, impairing its ability to perform more traditional judicial functions. Since the courts are not designed, as are the political branches, to harmonize divergent views within the community and take action in accordance with the broadest possible concensus, such review may exceed their proper function. Moreover, placing the courts in the role of a "super legislature" may encourage irresponsibility and lack of creativity on the part of the political branches because they will be aware that decisions taken by them are always subject to judicial reversal.

This should suggest that the concept of judicial review, which

is usually thought of merely in terms of Supreme Court review of acts of Congress and of state legislatures deserves consideration from the viewpoint of the government of communities, as well. The vast array of state and federal courts which may review the actions of community governments means that the local power structure cannot be isolated from the larger political and legal environment.

NOTES

1 Senior v. New Canaan Zoning Commission, 146 Conn. 531, 153 A.2d 415 (1959), appeal dismissed, 80 S.Ct. 1083 (1960).

2 New York Times, July 5, 1959, p. 58.

3 House & Home (July, 1960), p. 41.

4 The appeal was dismissed "for want of a substantial federal question." 80 S.Ct. 1083 (1960).

5 House & Home (July, 1960), p. 59.

6 Bilbar Construction Company v. Easttown Township Board of Adjustment, 393 Pa. 62, 141 A.2d 851 (1958).

7 David Craig, "Zoning," University of Pittsburgh Law Review, Vol. 20 (1958), p. 278.

8 Theodore O. Rogers and others, Zoning for Minimum Lot Area (Philadelphia: University of Villanova Press, 1959). See John M. Anderson, "Book Review," Notre Dame Lawyer, Vol. 34 (1959), p. 603.

9 Bentley's proposition on the pressure of interests in the judiciary developed partly from his view of the Chicago traction company cases in which the Supreme Court limited the rights of the franchise street railways as against municipal control. North Chicago City Railway Co. v. Blair, 201 U.S. 399 (1906). He related the outcome in these cases to broad changes in public opinion over the previous decade more than to the conscious efforts of organized interests or to the labors of the attorneys. Arthur F. Bentley, The Process of Government: A Study of Social Pressures (Chicago: University of Chicago Press, 1908), pp. 392-393. His conclusion was that Supreme Court justices are "a functioning part of this government, responsive to the group pressures within it, representative of all sorts of pressures, and using their representative judgment to bring these pressures to balance, not indeed in just the same way, but on just the same basis, that any other agency does, and that in this Chicago case they let a changing weight of group interests come very close to expression." Ibid., p. 393.

10 The quotation is from a leaflet published by the National Institute of Municipal Law Officers, 839 17th Street, N.W., Washington 6, D.C. I am indebted to Mr. Brice W. Rhyne for information about NIMLO. Interview, Washington, D.C., March 25,1960.

11 The most important publication is Charles S. Rhyne, Municipal Law (Washington: NIMLO, 1957), said to be the only one-volume treatise on municipal law published since 1910. Regularly issued publications include NIMLO Municipal Law Review, NIMLO Model Ordinance Service, Municipal Ordinance Review, Municipal Law Court Decisions, and the Municipal Law Journal.

12 Commonwealth v. Guess, 168 Pa.Super. 22, 76 A.2d 500 (1950), affirmed without opinion, 368 Pa. 290, 81 A.2d 553 (1912), appeal dismissed, 342 U.S. 912 (1952). See Rhyne, Municipal Law, p. 471, n. 28.

13 Among cases in which NIMLO has filed a brief as amicus curiae are the following: Frank v. Maryland, 359 U.S. 360 (1959); City of Detroit v. Murray Corporation, 355 U.S. 489 (1958); Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954); District of Columbia v. Little, 338 U.S. 866 (1949), in support of the petition for certiorari, and at 339 U.S. 1 (1950), on the merits; Oklahoma Natural Gas Co. v. Federal Power Commission, 358 U.S. 877 (1958), in support of petition for certiorari; United Gas Pipe Line Co. v. Memphis Light, Gas & Water, 355 U.S. 938 (1958), in opposition to certiorari, 358 U.S. 103 (1958), on the merits; Smith v. California, 80 S.Ct. 399 (1960), in support of rehearing.

14 Quoted in Journal of Housing, Vol. 17 (May, 1960), p.187-188.

15 Ibid. The position of the National Association of Housing and Redevelopment was widely reported. See New York Times, July 10, 1960, p. 43; Milwaukee Journal, August 21, 1960.

16 Ohio ex rel. Eaton V. Price, Chief of Police, 80 S.Ct. 1465 (1960).

17 Hartsfield v. Sloan, No. 683, Misc., Oct. Term, 1957. This information was obtained through a visit to the offices of the United States Conference of Mayors, 1707 H Street, N.W., Washington 6, D.C. See the pamphlet, The United States Conference of Mayors: Its History, Organization, Activities, and Services (Washington, 1953).

18 This information is based, in part, on an interview with Mr. Robert D. Sundby, Legal Counsel, League of Wisconsin Municipalities, 30 East Johnson Street, Madison, Wisconsin, August 17,1960.

19 Dean Milk Co. v. Madison, 340 U.S. 349 (1950).

20 Zorach v. Clauson, 343 U.S. 306 (1952).

21 Tudor v. Gideons International, 14 N.J. 31, 100 A.2d 857 (1953), certiorari denied, 348 U.S. 816 (1954).

22 Comment of William E. Collins, Corporation Counsel, Rockford, Illinois, NIMLO Municipal Law Review, Vol. 22 (1959), pp.357-358.

23 96 So.2d 130 (1957).

24 Ibid., 133-134.

25 Ibid., 136.

26 Comment of F. Churchill Mellen, City Attorney, Pensacola, Florida, NIMLO Municipal Law Review, Vol. 22 (1958), p. 450.

27 Ibid., p. 452.

28 Case note by Thomas F. Lambert, Jr., Nacca Law Journal, Vol. 20 (Nov., 1957), p. 241.

29 Ibid., pp. 236-237.

30 Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

31 The case was tried in the Dade County Circuit Court. New York Times, July 19, 1960, p. 31; July 20, 1960, p. 27; July 21, 1960, p. 25. The trial was to be renewed in late August, 1960.

32 Minersville School District v. Gobitus, 310 U.S. 586 (1940), overruled in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

33 A landmark initiated by Catholics in Pierce v. Society of the Sisters, 268 U.S. 510 (1925). POAU has supported a number of state cases; none have reached the Supreme Court.

34 Newton Edwards, The Courts and the Public Schools (Chicago: University of Chicago Press, 1933; revised edition, 1955).

35 Truax v. Corrigan, 257 U.S. 312, 344 (1921), (dissenting opinion).

36 Edward S. Corwin, "The Supreme Court as a National School Board," Law and Contemporary Problems, Vol. 14 (Winter, 1949), p. 22. The quotation of Justice Jackson is from McCollum v. Board of Education, 333 U.S. 203 (1948), (dissenting opinion).

37 "Dillon's Rule" was originally expressed as follows: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation —not

simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied." John F. Dillon, Commentaries on the Law of Municipal Corporations (Boston, 5th ed., 1911), Vol. I, p. 448.

38 Wallace S. Sayre and Herbert Kaufman, Governing New York City: Politics in the Metropolis (New York: Russell Sage Foundation, 1960), p. 496.

39 This section of my paper is drawn largely from Comment, "Taxpayers' Suits: A Survey and a Summary," Yale Law Journal, Vol. 69 (April, 1960), pp. 895-924.

40 Ibid., p. 898.

41 Ibid., p. 906.

42 Ibid.

43 Ibid., pp. 907-908.

44 Madison, Wisconsin Capital Times, February 22, 1960, p.1.

45 Ibid.

46 Sayre and Kaufman, Governing New York City, see note 38, above, p. 497.

47 Letter of Samuel D. Smoleff to author, July 7, 1960. Citizens Union cases include the following: Childs v. Moses, 290 N.Y. 828, 50 N.E.2d 235; Bergerman v. Murphy, 303 N.Y. 762, 103 N.E.2d 545; Bergerman v. Gerosa, 3 N.Y.2d 855, 166 N.Y.Supp. 2d 306; Bergerman v. Byrnes, 305 N.Y. 811, 113 N.E.2d 557; Bergerman v. Wagner, 2 N.Y.2d 908, 161 N.Y.Supp.2d 434.

48 Comment, "Taxpayers' Suits," Yale Law Journal, see note 39, above, p. 904.

49 Ibid.

50 Ibid., p. 910.

51 Ibid.

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The American Education of Foreign Administrators: Lessons from American Training Programs in Foreign Countries

by

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

Prefatory Note

(The data for this paper were collected over the last seven years in several different ways. Field trips were made to a series of countries where host country nationals and foreigners were interviewed concerning public administration technical assistance programs. Altogether, 19 countries were visited for this purpose: Costa Rica, Panama, Peru, Bolivia, Argentina, Brazil, England, France, Netherlands, Belgium, Italy, Turkey, Lebanon, Egypt, Pakistan, India, Thailand, Vietnam, and the Philippines. In most instances, 10 to 15 open-ended interviews were held in each country, although in some cases, the number was much greater. To complement the overseas data, interviews were held in the United States with representatives of the United Nations Office for Public Administration, the Public Administration Division of ICA, the Overseas Development Division of the Ford Foundation, Public Administration Service, and some ten universities involved in public administration programs abroad. These took place largely from 1957 to 1960.

(The professional journals have carried an increasing number of accounts of the experiences of public administration personnel in technical assistance programs abroad, and some of these are cited in the pages that follow. The individual projects have issued a vast array of reports that give basic information on problems and achievements, and most projects have produced some research studies, teaching materials, syllabi, catalogs, etc. Most of the reports and a sample of the other printed or mimeographed material were surveyed.

(A bias must nonetheless be admitted. Participant-observer status in programs in two countries and in a training program in the United States have undoubtedly colored the analysis. At the same time, it is hoped this experience may have added a depth of understanding as well as a sympathy for the difficulties inherent in any training program in public administration for foreigners, so missing in Ugly-American-type treatises.

(Within a year, a monograph on some of the problems facing public administration technical assistance programs should be completed. The present paper is a preliminary analysis of a few of the topics to be dealt with more systematically in the forthcoming volume.)

Public Administration and Technical Assistance

In the eleven years since the Point Four Inaugural Address of President Truman, the world has seen a greatly augmented effort at technical assistance through public and private agencies alike in every corner of the globe. The United Nations with its Expanded Programme has given aid to 140 countries and territories, sent over 8,000 experts out on missions abroad, awarded some 14,000

fellowships to the nationals of underdeveloped countries, and given advice in more than 100 major fields of development. [1] Recently its annual expenditures have been around 30 to 35 million dollars. Multi-lateral programs of the Organization of American States, the Colombo Plan, and other groups have accounted for significant assistance, as have bilateral programs of countries in Europe and elsewhere. Largest of all has been the American bilateral program with its heavy expenditures for military and economic aid and its technical assistance outlays of about 150 to 200 million dollars annually. American foundations, religious groups, business organizations, professional associations, and universities have all contributed to the international effort to better the lot of man everywhere through helping others help themselves.

For what ends do others desire to help themselves? The last eleven years have witnessed the admission of dozens of newly independent countries into the family of nations. They, together with some of their similarly lesser developed older sister nations, have sought increasingly to achieve a rapid acceleration of development in the social, political, and/or economic areas. It is against this background that the technical assistance efforts have meaning.

Administrative means must be adequate to meet the political, economic, and social ends. While there are vast differences in the administrative machinery from underdeveloped country to underdeveloped country, conditions in the several countries have been alike in one respect: without substantial modification, the administrative systems have been more or less unable to facilitate effectively national development goals. This characteristic has not always been apparent either to host country nationals or to the well-meaning technical experts sent by international or national assistance agencies. Specialists in health, agriculture, or education have tried to assist host countries directly, without general improvement in public administrative practices. On occasion, functional specialists have resisted technical assistance in public administration on the ground that they could take care of their own areas by themselves or on the ground that given the shortage of funds and the primacy of the problems with which they deal, no money should be diverted to public administration.

It was thus only gradually that public administration became recognized as a legitimate and useful field of technical assistance, and substantially later than such functional fields as health, agriculture, and education. Until it became evident that functional goals were in danger of remaining beyond reach because of administrative factors, support for administrative programs was weak. While there is far from universal agreement on the matter even today, it may nevertheless be said that public administration has become recognized the world around as a field of importance for the modern state. Even in Western Europe and North America, increasing emphasis is being put upon administrative training. As a United Nations group said in 1957, "...the need for training in administration is everywhere felt and is closely related to the increasing activities of the modern state." [2] Certain underdeveloped countries have shown more interest in administrative training than some more Westernized or modernized nations. Technical assistance in functional fields, reflecting active national development goals, has been responsible.

The term training program has been used rather loosely in recent years. From one point of view, almost every public administration specialist who goes abroad under a technical assistance or an exchange program can be said to be engaging

to some degree in training host country nationals. Coming into contact with new ideas is educational, and when a host country national applies these ideas to administrative practice, training is sometimes thought to have taken place. In fact, the interchange of ideas in an informal manner is an effective element in many training programs. The focus of the present discussion is not on the process of a general exchange of ideas, however. Rather, attention is directed to those public administration programs that have as a major objective the training (or education) of foreign administrators, actual or potential, through more specific means. This automatically excludes much of the activity of direct hire ICA personnel abroad and of representatives of consulting firms. Since American programs are under review, those of the United Nations will not be considered, even though they involve individual Americans on occasion.

The vast majority of American training efforts abroad in public administration have been undertaken by American universities. They have been financed by ICA or the Ford Foundation, especially the former. Typically, a team of American professors and supporting personnel is sent abroad to work with a host government agency or institution of higher education in regard to training host personnel and related activities. With the University of Michigan blazing the trail in 1953, the following institutions have been active in this area:

University	Major Financial Sponsor	Host Country	Years
University of Tennessee	ICA	Panama	1955--
University of Tennessee	ICA	Bolivia	1955--
Univ. of So. California	ICA	Brazil	1959--
Univ. of Calif., Berkeley	Ford Foundation (earlier, ICA)	Italy	1955--
New York University	ICA	Turkey	1954-1959
Univ. of So. California	ICA	Iran	1954--
Univ. of Pennsylvania	ICA	Pakistan	1954-1959
Syracuse University	Ford Foundation	Pakistan	1959--
Univ. of So. California	ICA	Pakistan	1960--
Indiana University	ICA	Thailand	1955--
Indiana University	ICA	Indonesia	1959--
Michigan State University	ICA	Vietnam	1955--
University of Michigan	ICA	Philippines	1953-1957
University of Minnesota	ICA	Korea	1957--

Ten universities have been active in 12 countries in connection with 14 substantial-sized training programs in public administration. Three of the programs have been completed, and seven others have been underway for at least three or four years. Only four of them (USC in Brazil and Pakistan, Syracuse in Pakistan, and Indiana in Indonesia) have been going such a short time -- less than two years -- that it is dangerous to draw any "lessons" from their experiences so far.

While the 14 programs overseas are those that officially are called programs in public administration, there are many other American university contracts or arrangements that have taken American professors overseas directly in this or a closely related field. For example, ICA has underwritten several general university development contracts, and in connection with these, professors of political science or public administration have found their way to such countries as

Turkey (Nebraska), Pakistan (Washington State), or Nigeria (Michigan State). Professors with similar backgrounds have gone to American universities located abroad such as International Christian University in Japan or the American University of Beirut. AUB has had an especially active program in public administration. Americans have played a role in the preparation for or running of United Nations training institutes in public administration in such countries as Costa Rica (for Central America), Peru, Brazil, Turkey, Egypt, Ethiopia, and Israel. Under Fulbright awards or foundation grants, individual professors of public administration have found their way overseas. Some of these persons have contributed to training programs, centrally or peripherally. In Italy, the California program has made use of Fulbright awards. The University of the Philippines Institute of Public Administration has found a Rockefeller Foundation grant a means of attracting American professors. Training institutes that have been founded at the initiative of host country personnel and that have not been the center of technical assistance efforts such as those in Chile or India have utilized American personnel on an ad hoc basis from time to time, much as an American university at home will make use of visiting professors from abroad. ICA and American consulting firms have found American professors to be a useful source of potential recruits for direct hire overseas assignments in public administration, especially when the assignments have involved some training program.

Although not officially called programs in public administration, there are many university contracts in closely related fields that make a greater or lesser contribution to it. The several ICA university contracts in business administration (in Brazil, Austria, Israel, Korea, etc.) are examples. Even more related to public administration are the several university consulting and training efforts in the field of economic development, especially those concerned with the process of central planning. The Ford Foundation and Harvard have teamed up in such programs in Pakistan and Iran, and more recently ICA has begun to turn to American universities in this area, such as with Oregon in Korea and Northwestern in Liberia. The Ford Foundation-financed Michigan State program in Pakistan has its emphasis on helping with the creation of two training academies for public personnel at the district level or below, especially in regard to the needs of village development.

Actually, a listing of the several programs abroad understates the involvement of American universities in host country training programs. Through nation-wide recruitment, personnel from many universities other than those mentioned have participated, such as UCLA, New Mexico, Texas, Colorado, Kansas, Wisconsin, Cornell, Boston, Columbia, Yale, West Virginia -- the list could be extended almost indefinitely. Furthermore, there has been a considerable informal interchange of personnel between one program and another. Visiting back and forth from training institute to training institute has often involved guest lecturing or friendly advice, so that any professor who goes abroad under one program for a year or two is likely to have made some contribution to three or four programs before his tour of duty is over. Indeed, it is becoming impossible for an American professor of public administration to make any substantial trip abroad without receiving one or more kind invitations to lecture at training institutes.

American university interest in public administration training programs abroad has been paralleled by certain activities at home. Quite apart from the overseas programs, several universities have distinctive training programs in which host

country personnel participate. Under special ICA contract, Wayne State has trained administrative personnel from Indonesia and Brazil at its home campus. USC has done so in regard to Pakistan over a three-year period, 1957-1960. Even earlier, USC trained groups of Brazilians at its Los Angeles campus. To some extent it can be said that the present Pakistan and Brazilian overseas programs of USC are outgrowths of these earlier United States-based programs. Syracuse, Pittsburgh, Vanderbilt, and Michigan State have all had various training programs on their campuses emphasizing technical assistance in public administration, economic development, or development administration. On occasion, these programs have been stimulated by the experiences of staff members in training programs overseas.

We thus come to "Lesson Number One." It is apparent that there is an increasing demand for and interest in training programs in public administration abroad, assisted in various ways by American personnel. The demand for such programs in host countries is not universal, but is is widespread. Interest in the programs at American universities is not universal, but it is widespread. Furthermore, if it be understood that these programs are a direct outgrowth of the development efforts of host countries, and that such development efforts are likely to be augmented in the next decade, we can conclude that demand for and interest in American participation in public administration training programs abroad will increase rather than diminish in the 1960s. Thereafter, such participation may taper off, taking more the form of mutual exchange by the end of the 1970s.

Why have so many countries turned to the United States for help in public administration? Is it just that the United States has a high level of development or that its bilateral technical assistance effort is so large that money is readily available? These may be partial explanations, but they do not strike at the root of the matter. The basic fact is that other countries have been increasingly turning to the United States in the field of public administration because the United States is perceived as a leader in this particular field. More particularly, the kind of training (and educational) programs in public administration that have developed at United States universities have greatly interested our colleagues at European institutions as well as those from less developed countries. Andre Molitor's admirable survey, The University Teaching of Social Sciences: Public Administration [3], points this fact up most thoroughly. He observes that "... the purely juridical approach prevailed in most European countries from the second half of the nineteenth century onwards. Generally, the position remains unchanged today." However, he feels "... that the study of non-juridical administrative sciences should preferably be attached to political science and that, similarly, speaking quite generally, administrative law should give way to political science in the cultural order of priority as the centre of the 'solar system' of administrative sciences." He notes that there are world-wide trends in this direction, and that the United States is the leader. While European and other countries in the administrative law tradition are trying to achieve a synthesis between administrative law and non-juridical approaches to public administration, the United States, never in the administrative law tradition, seems content to continue to specialize in non-juridical aspects. The United States is the country "... in which the development of teaching, theory and research in our field is by far the greatest" and, again, in discussing "the impressive development of university teaching of administrative sciences in all parts of the world during the last thirty years or so," he notes that "It appears to be most developed in the United States."

Consequently, technical assistance in public administration "... appears, in the aggregate, to be governed by the influence of United States ideas, which, as already noted, largely monopolize the non-juridical administrative science 'market.'"

It is thus not accidental that emphasis on public administration training should have been so evident in many countries during the last ten years and that the United States was viewed as a leader and as a source of assistance. It may be too early to tell whether American specialists of public administration have been fully equal to the responsibility thus placed upon them, but some preliminary judgments can now be made in regard to several of the older programs. Attention will be focussed on the ten oldest American university training programs in public administration abroad in which American universities have played an important role, plus the experience of AUB in the Middle East and Michigan State in Pakistan. Occasional comparisons will be made to training programs assisted directly by ICA or handled by consulting firms (such as Public Administration Service in Burma), the training institutes programs of the United Nations, and the efforts of a few countries to establish training programs without technical assistance from abroad. Rather than examine all the detailed problems in establishing technical assistance programs overseas, discussion will be limited to two major aspects of them, namely, the general framework within which technical assistance is extended and what aspects, if any, of American experience in public administration training seem transferable to other countries.

The Framework of Assistance in Public Administration

Any technical assistance program in public administration must contain an answer to the difficult problem of how assistance is to be extended. Should personnel be recruited to go to the host country to run agencies or institutions or parts thereof until host country personnel are available? Should the efforts of experts be focussed on helping host country nationals establish new institutions? What should be the role of outside expert advice to host country nationals who are functioning within already existing host agencies or institutions? The experience of the last ten years yields tentative answers.

Substituting for Host Country Personnel

One of the most universal characteristics of underdeveloped countries is a shortage of trained personnel in certain specialized, professionalized fields. A scarcity of manpower in public administration, both at the operating and the teaching levels, is commonly found. If personnel needs cannot be filled locally, it is a natural next step to look abroad for help. A substantial proportion of the less developed countries are newly independent, and to employ foreigners in positions requiring a high degree of professionalization is a recognizable extension of former colonial practices, with the important modification that in the former instance it is carried out as the result of local request and approval. Even in some countries without recent colonial pasts, the selective employment of foreigners goes on apace. Nor is such employment restricted to the less developed countries. Universities nearly everywhere seek or at least accept professors from abroad as well as from their own countries to fill certain kinds of positions. While the practice is less common among the governments of the more modernized nations, there are instances in which they employ experts from other countries.

The classic example of substituting outsiders for host country personnel is the OPEX program of the United Nations. As the result of General Assembly action in November 1958, a new service was established to provide operational and executive personnel to underdeveloped countries. Such personnel is a part of an international civil service that is paid standard rates, the United Nations making up the difference between host country scales and international scales. With a first year budget of $200,000, it recruited 25 experts to meet some 106 requests. The main responsibility of OPEX personnel is to operate governmental activities for the host country, rather than to advise or train, even though the General Assembly resolution establishing the service said in part, "... it being understood that such duties shall normally include the training of nationals to assume as early as possible the responsibilities temporarily assigned to these internationally recruited experts." Here the notion of training is clearly on-the-job training, carried out rather informally while the outside expert carries out his operating assignment; it is training through demonstration, providing, of course, that the host government assigns anyone to watch the demonstration.

American universities have permitted themselves to become OPEX-type operators in regard to public administration training institutes in many instances. Keeping in mind a distinction between general policy direction of the institutes and the teaching that is carried out at them, four practices are evident. At one extreme, American university professors have not been involved in management of the institutes nor have they carried on regular teaching. Michigan State in Pakistan is illustrative. At another extreme, Americans have engaged in both teaching and management of the institutes, and have been the sole or predominant factor in regard to both activities. AUB and the Pennsylvania-Pakistan program are examples. In the largest number of programs, American professors teach extensively, and because of inexperience, lack of time or interest, or weakness on the part of host country directors, in fact play a major role in management of the training institute. This has been true in the California-Italy, NYU-Turkey, Indiana-Thailand, and Michigan-Philippines programs throughout all or a part of their life. Finally, some programs have had determined host country leadership that has effectively managed the institutes, although American professors have played a supplementary role on the teaching side. The Michigan State program in Vietnam has followed this pattern.

Have these several patterns arisen under any special conditions? What has been their effect on what Max Millikan has called the fundamental criterion of technical assistance: to maximize additional effort in underdeveloped countries? [4] In answer to the first of these questions, it is apparent that those programs that maximized the use of the OPEX-type formula did so as the result of pressure to produce immediate results together with there being a lack of qualified host country personnel to staff the institute or a lack of interest on their part in doing so. The three completed programs underline the point. Michigan, being the first, felt under an unusual pressure to come into the Philippines, establish, direct, and staff an institute, and leave a going Filipino institution, all in four years. Partly the pressure was that of ICA which at this time did not yet realize how long-range higher educational programs of necessity were. Partly the pressure was from the Michigan personnel themselves who wanted to demonstrate beyond a shadow of a doubt that they could set up an institute and transfer it to the Filipinos within the original contract limitations. They also did not want to stay involved overseas very many years. In fact, the first two Michigan chiefs of party pretty much ran the institute and established its major policies.

American professors taught most of the specific courses in public administration. Meanwhile, a group of Filipinos were sent to the United States to begin work on their doctorate so that they could at some future date replace the Americans. The Michigan personnel thought that the four-year contract completion date was so much a point of honor that they insisted that the Filipino participants return to Manila in time to take over in the fifth year, even though they had not yet completed their Ph.Ds. This caused some subsequent difficulties for the Institute since in its first few years as a Filipino organization it has had once again to turn to training in the United States for its staff to complete their degrees, this time under a Rockefeller grant. The scope of activities of the Institute has consequently been minimal. However, the major fact is that a modified OPEX formula did produce a genuine Filipino Institute in four years, an achievement that no other university comes close to duplicating. It should be noted that conditions for such an achievement were favorable: English was the language of instruction at the University of the Philippines, Americans were looked upon kindly, the many years of American colonial policy had produced a university that was similar in its structure and procedure to that of an American university, and a group of Filipinos were interested or became interested in seeing the Institute succeed.

Throughout the five to six years of the University of Pennsylvania-University of Karachi program never once did a Pakistani serve as director of the Institute and never once were the majority of courses in public administration taught by Pakistanis. Most frequently the public administration staff of the Institute consisted of one Pakistani and two Americans. Not that no efforts were made to secure a Pakistani director. The Final Report of the University of Pennsylvania describes some of the frustrations:

> "Actually very little in specific accomplishment took place during the term of office of the first Vice-Chancellor. He was a busy man, assuming all the responsibility of setting in motion the newly created University of Karachi. Regarding a Director, he helped in suggesting candidates and hoped that the Institute would find a suitable man. But he also remarked, and on more than one occasion, that there really wasn't any reason for being in a hurry since the Institute had an acting director in the Chief Advisor and that a suitable person could be found more easily as soon as the Institute became well established and well known. To this it was pointed out that the Pennsylvania team planned to continue only until June, 1957 and that prompt action was needed in order to introduce the new appointee to his duties. But the Vice-Chancellor showed nothing more than mild concern on this point and on one occasion observed that the Institute would surely need to continue somewhat longer. There was, of course, some sense to what the Vice-Chancellor said and not much that could be said in rebuttal....
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> "While several persons were considered during the term of office of the first Vice-Chancellor, none who were available appeared attractive. Shortly after the new Vice-Chancellor took office a candidate of promise - Mr. U. Kramet - came up for consideration. He was a member of the Institute's In-service Advisory Board and as a schoolman of many years brought to the Board both background and good judgment. Moreover, there was the possibility that he would accept appointment as Director of the Institute since he was interested and his 5-year appointment as a member of the Federal Public Service Commission would soon run out. The Vice-Chancellor favored his appointment. Mr.

Hashmi, prior to his appointment as Vice-Chancellor, had been a member of the Institute's Board. He regarded Mr. Kramet highly, as did others on the Board. The two members of the Public Administration Division of USOM were apprised of his record and met with the candidate informally. So, also, did a committee from the Institute Faculty. All looked with favor upon his possible appointment.

"When asked by the Vice-Chancellor if he would serve, Mr. Kramet said he would if the appointment could be cleared. This was in early December, 1957. Later that month, when asked about the necessary steps to accomplish the appointment, the Vice-Chancellor raised doubts regarding funds sufficient to meet the salary. This difficulty was cleared by the setting up of a separate budget for the Institute to become operative April 1, 1958.

"The steps necessary to formalize Mr. Kramet's appointment... were long and tedious, requiring approval of the post by the Academic Council, the Financial Committee, and the Syndicate, followed by advertisement of the position, review of applicants by a Selection Committee, then the Syndicate. Approval of the post, including salary, was accomplished in late January. There were two applicants who applied for the post in March. One was not eligible, thus leaving only Mr. Kramet for consideration. The next step was appointment of a Selection Committee to consider the qualifications of the candidate. Unfortunately postponement after postponement moved the meeting time to late June. In the meantime, another offer came along (on May 11) which the candidate reluctantly accepted....

"The University sent out another request for applicants via the four leading newspapers of Pakistan in March 1959...

"There were nine who responded to this advertisement. Conventional procedure following receipt of applications is to appoint a Selection Committee to interview the candidates and select the best from those who qualify. But in this particular case, difficulties were encountered in setting up a qualified Committee. Postponement followed postponement. Finally in early December a fully qualified Selection Committee met. They met, however, after months of delay only to learn that there were no candidates with adequate qualifications. So the Director problem continues to be a problem." 5

In the Pakistan case, therefore, the results of the OPEX formula were far different from that achieved in the Philippines. After five or six years, the Institute was not firmly under the management of Pakistanis. Feeling under pressure to establish a training program in the early years of the contract, the University of Pennsylvania put most of its energies into this task rather than in the training of participants. Furthermore, the genuine interest of the University of Karachi in the program can be questioned. The Institute played a more important political role in the relation of the Vice Chancellor to some parts of his faculties than it did to the on-going educational plans of the university. According to some of the Pennsylvania staff members, a severe disadvantage of the OPEX formula was that an American could not be as effective a spokesman for the Institute in University of Karachi circles as a Pakistani could have been.

In Turkey, New York University assisted the University of Ankara in a public administration program within the Faculty of Political Sciences. Since New York University was working within an established faculty, its organizational position was quite different from that of Michigan or Pennsylvania, which were helping to establish new institutes outside any existing faculties. Aside from this organizational difference, the situation it confronted was more like that of Pennsylvania than that of Michigan. There was little Turk interest in the program, and no effective planning for long-range goals was carried out. As a matter of fact, the New York University team was treated more or less as a device to get substitute professors at the undergraduate level in the Faculty of Political Sciences. The Summary Report of New York University indicates some of the problems encountered. [6] At first, the New York University group felt that there would be solid advantages in asking the team members to accept rather heavy teaching assignments:

> "First, it enabled the New York University group to establish rapport between the American professors and their Turkish counterparts. Second, it made possible a comparative revision and expansion of the curriculum. Third, it helped to introduce new subject matter, teaching methods, and teaching aids. Fourth, teaching assignments gave members of our group an insight into the Turkish educational system which would have been difficult to obtain in any other manner. Fifth, teaching assignments were arranged so as to assist in the professional development of younger faculty members."

Here was clearly the idea of a demonstration. However, the involvement in teaching proved to be so time-consuming that other program objectives were being jeopardized.

> "... some program goals could not be achieved if the New York University professors were to continue carrying direct classroom responsibilities, particularly at the undergraduate level. Accordingly, the Chief of Party advised the Dean of the Faculty of Political Sciences that the New York University professors could no longer be directly responsible for classroom assignments, although they would continue to provide technical assistance to the Faculty members. The result of the New York University group withdrawal from direct undergraduate classroom responsibility was that the New York University professors were able to devote the major part of their energies to research, consulting, and writing activities."

In some instances, New York University concluded, "... the New York teaching responsibility appeared to be designed simply to relieve members of the Faculty from their otherwise heavy teaching load." All of this occurred in a context in which there was "... a serious lack of adequate long-range planning on which the most effective technical assistance might logically be based." Part of the lack of adequate planning was due to a situation in which "Individuals within and without the Faculty, particularly some of the senior professors, at times appeared to be opposed to changes which might affect their interests or upset the status quo of the Faculty."

Reviewing these and other experiences of American universities with public administration training programs abroad, what can be concluded? There are several "lessons" here. Keeping in mind Millikin's fundamental criterion of assistance as maximizing additional effort in the host country, five generalizations seem in order:

1. If there is no feeling of urgency for change among host country nationals in the host organization, substituting outside experts for host country personnel is undesirable, even as a temporary expedient. Instead of maximizing additional effort in the host country, it is likely to minimize it. A feeling of urgency in the sponsoring organization or in the American university is not sufficient.

2. While effective long-range planning is always desirable, it is crucial if substitute administration is accepted as a device. Without such a long-range plan there is great uncertainty as to when, if ever, the host organization will be able to take over the training program.

3. Substituting American professors for host country personnel in training programs may be a suitable short-term activity designed to give a live demonstration of effective teaching techniques and innovations in curricula. However, a demonstration must be watched and observed closely in order for it to have a desirable affect. Where no one is interested in the demonstration, it is fruitless.

4. Underdeveloped countries vary greatly in the degree to which they have shortages of personnel for public administration training purposes. Most of them, if they are convinced that public administration training is important, could at least provide an effective director for the institute, and some supplementary personnel. In any event, unless there is a complete dearth of personnel, as in some (but not all) of the newly independent African nations, substitute administration does not seem appropriate.

5. Closely allied to the preceeding point is the fact that substitute administration should probably be confined to a few of the situations in which a new organization is being established. If changes are sought in an old organization, it is probably best to require the host organization to invest its own personnel in the program, as a sign of its commitment to the program objectives.

If these generalizations are sound, a major change needs to be made in the method of lending technical assistance personnel for training programs in public administration. There has been entirely too much direct action by Americans (and, for that matter, in several United Nations programs entirely too much direct action by United Nations experts). In the long run, little can be done to help the large part of the world that is classed as underdeveloped unless host countries seek actively to help themselves. There are not enough outside experts to satisfy the needs of the whole world.

Institution-Building

The process of modernizing is in part a process of specialization, the development of new, specialized institutions to perform functions that were not necessary under the previous regime. In nearly all countries of the world there has been a recent tendency to create new institutions or specialized organizations for public administration training, but nowhere has this become more marked than in the underdeveloped countries. Even though institutional structures for training for the public service and their adequacy vary widely from country to country, the American university programs in public administration abroad have involved extensive institution-building almost without exception.

There have been many forms for the new institutions. On occasion the exact form has varied with the level of the curricula: undergraduate, graduate, or in-service training. The form has also varied with whether students are inducted into the public service before being accepted as students or whether, on graduation, they receive a mere "hunting license" for a public position. In the typical case a training institute has been established as a condition of the contract for technical assistance with an American university. As the result of contract negotiations and formal or informal understandings, an institute usually becomes the center of the technical assistance effort. Whether specifically spelled out in contract form as with USC-Iran or Tennessee-Bolivia or whether mention of an institute is "overlooked" as in the case of Pennsylvania-Pakistan makes little difference. Nor is it significant that in the case of Michigan-Philippines and most other programs a brand new institute was created while in the Michigan State-Vietnam situation an existing national school of administration was changed to the National Institute of Administration, with its location moved from Dalat to Saigon and its functions rather markedly altered. No matter what the form, there can be no doubt that the most important central objective of the American university public administration programs abroad has been one of creating new institutions.

Apparently, the initial establishment of a new organization has been a relatively simple matter for most projects. Almost all of them have opened their doors to students within a year of the signing of the technical assistance contract (largely as the result of the direct teaching of American professors, however). Yet institution-building requires more than that a new organization be established. It must fit into local ways of doing things, be staffed, supported, and wanted by host country nationals, and perform a useful function for the society. It is in regard to some of these latter points that several of the new institutes have yet to prove themselves. There are both advantages and disadvantages to an institute being established as the result of contractual arrangements between the American university and the host organization. The advantages are that the contract provision forces the host organization into thinking through the pros and cons of the new institute at an early date, to plan for it and establish some priority for it, and to permit an early start to be made on institution-building. The two major disadvantages are that the outside resources that come with a technical assistance program may be desired more than the new institute itself, and what appears to be a decision favoring a new institution is merely a compromise with expediency. Furthermore, if technical assistance in public administration is predicated on the condition that an institute be established, the institute may be thought of as an outside or "foreign" organization, and resistance to its integration into the host country university and/or governmental system may be substantial. In part the Indiana-Thailand program has been a victim of expediency politics of the Thais, and both Pennsylvania-Pakistan and Tennessee-Bolivia have found it difficult to have host country nationals think of the new institutes or schools separately from the American universities and the technical assistance contracts.

1. Experience to date leads to certain generalizations. Support is warranted for the general practice of agreement as to basic new institutions before a university contract is signed. A somewhat longer period of pre-contract exploration of alternatives preclude still other institutions from being started jointly by Americans and host country nationals would augment support for the solution adopted in most cases. Of course, agreements reached at the contract stage would not preclude still other institutions from being started if experience indicated their desirability.

2. Where host country organizations or American universities cannot agree as to the best course of action relative to institution-building, it would be preferable to contract for a year or two of planning and exploration, rather than entering into a large technical assistance contract prematurely. This would reduce the possibility of expediency politics being the prime factor behind a new institution or of the new institution being regarded as an American fish out of its appropriate water.

Another point of tactics is the organizational environment in which the fledgling new institute is placed. The variety of arrangements to be found almost defies classification. In the NYU-Turkey program innovation was sought within a regular university faculty and hence for all practical purposes a new organization was not created, although a paper one was established. The California-Italy, Minnesota-Korea, and USC-Iran programs relied upon institutes created within existing law faculties. A quasi-independent status within the university, somewhat less than that accorded regular faculties, was given schools or institutes in the Tennessee-Bolivia and Pennsylvania-Pakistan programs. At least two of the institutes found themselves with a quasi-independent status within the government, including the National Institute of Administration in Vietnam (a part of the Presidency) and the National Officers Training Institute in Korea (a part of the Office of General Affairs of the Korean Government, and a modified rather than a new organization). In the Philippines and Thailand, the Michigan and Indiana programs resulted in institutes being created with full but independent faculty status.

It is far too early to generalize with assurance about the relative desirability of one course of action as compared with another, since institutionalization is a very long-range process. The proof of the usefulness of present arrangements will only be available when the American university contracts have been completed and it is observable whether or not the institution has grown deep host country roots. While the lessons to be drawn at this time must be very tentative, the following statements seem supportable:

1. There is a patent and obvious need in most underdeveloped countries to institutionalize a new training process for administrative personnel in the public service. A new organization stands as a symbol of the new development needs of the country in this area. It helps to protect the new training program from the more tradition-bound sources of training and maximizes the opportunity of experimenting with new techniques and curricula.

2. Very tentatively, it appears that extremes in organizing the new institutes should be avoided. There should be a sufficiently distinct organization so that it is not swallowed up by traditional groups, and yet it seems unwise to set it up so independent that few or no outside groups have a stake in its success.

To be more precise, the NYU-Turkey program lacked enough separate identification to continue to exist. On the other hand, the Pennsylvania-Pakistan program suffered from an excess of independence relative to both the University of Karachi and the Government of Pakistan. Tennessee in Bolivia was in a more fortunate situation. While it was equally quasi-independent of the University of San Andres, its program was not essentially an academic program like that in Pakistan, but rather was one of in-service training. Hence it had at least two opportunities

to become recognized as a permanent, functioning unit of Bolivian specialized training: within the Government, and within the university. The seriousness of the matter can be judged by the conclusion of a survey of the program in 1958: 7

> "It seems likely that if the school is going to continue, a number of adjustments of past practices will be necessary. One of these is a strong effort to gain the real support of the university. Another is a serious attempt to do research in agencies so desiring so that agency research can be combined with specific teaching of personnel of that agency, and thus lead directly to reforms within that agency. This means a selection among potential technical assistance activities on grounds of value to the promotion of the school."

American universities are not alone in struggling with problems of the relative independence of new training institutes abroad. Several of the training institutes of the United Nations have been subject to the same problems. As a whole, the policies of the United Nations are in the direction of independence for the institutes. The 1957 working group at Geneva examined this topic and concluded as follows: 8

> "4. The legal status of the institution is determined by the official instrument which created it: this may be a law (Egypt), an international agreement (Central America), an executive decree (Brazil), or a ministerial order (Burma). This will give it a degree of autonomy which may have an important bearing on its effectiveness. It must of course have its due place in the hierarchy of government or be affiliated to some academic institution, but some independence is essential for the experimental work required for the development of new training programmes. The institution itself must be free to advocate administrative improvement and reform and to promote professional and public interest in rational methods of administration.
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> "5. The strength and viability of the recipient institution as a training establishment depdnds on this independence. Its continuity is important since the general movement for administrative reform must be a continuous and not an intermittent process. To support this the training institution must, so to speak, develop a personality. It must gain professional reputation as a centre of authoritative opinion and of research in public administration. It must try to create a favourable attitude toward administrative improvement among government officials and also amongst members of the public. It must grow firm roots in the educational and administrative traditions of the country. Its capacity to do this depends on the strength of its internal organization, its staff and its methods of work."

However, it may be wondered whether the emphasis on independence has not been excessive in United Nations doctrine. The early institute in Brazil which was assisted by the United Nations and which is still in existence was ineffective in part because of an excess of independence from both government and universities. Excessive separateness is also a problem of ESAPAC (the Advanced School of Public Administration for Central America); indeed, it is inherently a problem with any regional training center. Nonetheless, on a direct hire basis, ESAPAC is something of a showcase for the United Nations. In Turkey, organizational problems plagued the United Nations as well, at least until 1958. The institute, which was to engage in in-service training, was more or less isolated as a separate unit of

the Faculty of Political Sciences at the University of Ankara. Transfer of the institute to the prime minister's office in 1958 removed this artificial and damaging isolation.

American universities have never resolved the question as to when it is appropriate to place an institute at a university and when it is best to place it within a governmental agency. Several kinds of practices are to be found. For example, Tennessee-Bolivia assists a program of in-service training attached to a university, while Michigan State-Vietnam advises a diploma pre-service curriculum attached to the President's Office. Minnesota-Korea is active in both and works it the other way: the in-service program is affiliated with a government agency while the degree program is a part of Seoul National University. One explanation of the advice extended by American universities lies in the philosophy of service associated with American higher education. Even in the United States, universities vary one with another in the extent to which they administer in-service training programs directly or merely lend a helping hand to a personnel or line agency in the latter's program. Abroad, the institutes with which American universities have been associated have more frequently than not carried on in-service training programs directly without much reflection about the desirability of so doing. Eventually, the Michigan-Philippines program shifted from direct in-service training to the training of training officers for government agencies and helping these agencies in their own programs in a supplemental way. The Michigan State-Vietnam program went through a similar evolution. Encouraging the appointment of training officers involves institutionalizing well beyond a single training center; it means helping a training unit emerge in nearly every major government agency. This would seem the sounder procedure, with each government agency responsible for its own in-service training and the personnel agency, perhaps, assuming general leadership. The university institute could play a supplemental part. Yet it should not be forgotten that even in the United States institutions such as the University of Southern California run extensive in-service training programs by themselves, as well as contribute in a supplemental fashion to training programs of government agencies.

The United Nations Office of Public Administration would not be satisfied with such a view. The philosophy that has been jelling in discussions between the United Nations and UNESCO is that a clear separation should be made between a university institute with a degree program, normally on a pre-service basis, and a government-attached institute that provides leadership in in-service training of all kinds. Most American universities find this division too arbitrary and too much European in its inspiration. Any program that tends to exclude professors or their students from governmental offices or decrease contacts with bureaucrats is likely to lead to a rather theoretical, legalistic approach to public administration. In the only instance where both a United Nations and an American university program existed side by side (in Turkey), it proved impossible to contain the efforts of the NYU team to the ivory tower. Actually, the two philosophies could be made compatible if the in-service training institute is willing to accept occasional help from the personnel and other resources of the university program.

It is often difficult to determine success of a program in institution-building because it is unclear as to how many institutions it was intended be built. If a public administration program is good for one university in a country, why not for the other universities (where there are two or more)? If an in-service

training program is deemed suitable for the central government, why not the provincial and district governments, also? Potentially, each new training institute within a government or university is a demonstration that can have an important spread effect. For the most part, existing institutes have had almost no spread effect from university to university or within universities. It is true that competing universities in Pakistan and elsewhere have come to ICA or the Ford Foundation and asked them for money to set up their own programs. But none have been set up on host country initiative, with host country resources. It is in countries that have not received help from the United Nations or United States universities that have gone ahead on their own to establish training institutes, as in India and Chile. However, there has at least been a modest amount of spreading of in-service training programs from one government agency to another.

Only in Brazil and Pakistan have American university programs been created or designed to produce a spread effect through planned widespread deployment of American personnel, although Tennessee in Bolivia has helped to stimulate public administration interest in provincial universities. In this respect, the Tennessee-Bolivia program is a model which universities in other countries would do well to follow. 2 Somehow the training institutes have been overly capital city-oriented, too little concerned with the field.

Training the Trainers

Essential to institution-building and sometimes associated with substitute administration or with advice to an on-going institute is the training or further training of the staff or potential staff of an institute. Basically, in technical assistance work of American professors abroad there is an underlying conflict between the direct training of present or future government officials and the training of trainers. Nearly all the projects have emphasized direct training, especially in their early years, while at the same time aspiring to the training of the trainers, at least eventually. There are several reasons for the slowness in training the trainers. First of all, as has already been observed, several of the projects have felt a pressure to produce results quickly, and the graduation of officials from a course of study gives the appearance, perhaps somewhat deceptively, of action. Second, once having invested time in direct training, university personnel find it difficult to devote still other energies to training the trainers. As in the case of NYU-Turkey, the concentration on direct teaching leaves little time for other duties. Third, there is more host country receptivity to direct training than to training the trainers. The former involves few changes and little commitment of scarce host country personnel and other resources. Finally, training the trainers is a long-range, frustrating job that requires skills that are different from those of direct teaching and are far scarcer among academicians.

Two major techniques have been used by American universities in training the trainers, namely, the counterpart system and the participant training program. In its narrowist sense, the counterpart system refers to an arrangement whereby an American professor who is a specialist in one aspect of a field has a host country national assigned to him who, ideally, will replace him in the courses he teaches within a certain period of time. There may be an arrangement whereby an American professor teaches a course for a year or so on a demonstration basis for the benefit of his counterpart, followed by a joint teaching of the same course, followed eventually by the handling of the course by the host country national,

with the American observing. While nearly every project has been concerned to some extent with counterparts, the system has never worked out on the ratio of one-to-one for each American specialist present. Rather, the counterpart system has become a generalized idea in which each American specialist accepts some responsibility for associating with host country staff members who share his specialized interests.

Among the American universities that at least tried a narrower approach to the counterpart system are NYU in Turkey and Indiana in Thailand. Both had to accept certain modifications. Indiana found that no man-to-man system was possible, although counterparts for particular courses were developed. Thai and American jointly planned the course and lectures and went into the classroom together. By late 1959 this system was described as follows: [10]

> "Whereas in the past most of the courses were conducted jointly by American and Thai instructors, a shift in teaching responsibility is now taking place. ... During the May-September semester three courses were taught entirely by Thammasat University instructors and ten courses were taught by Indiana instructors working jointly with Thammasat University counterpart instructors. During the semester beginning in September 1959, Thammasat University staff have taken over full responsibility for seven courses while five are being given jointly by Thai and American staff members of the Institute."

Thus over a period of five to six years Indiana found it possible to transfer a majority of the instruction to the Thais, using a combination of counterpart system and participant training.

NYU had considerably less success with their counterpart system. Cooperation from the Faculty of Political Sciences in appointing counterparts was not forthcoming. They did appoint assistants or interpreters, but not true counterparts. NYU sums the matter up as follows: [11]

> "In the assignment of assistants and counterparts, at times it seemed that the most important thing considered was the course being taught and the American professor who taught it, and not the training of the individual or counterpart to learn new methods and techniques, which would enable him at some future time to conduct the course without help. There were instances when assistants and counterparts were assigned to the New York University group when it seemed certain that the individual concerned would not be responsible for the particular area of study at any future date. In these instances, the New York University teaching responsibility appeared to be designed simply to relieve members of the Faculty from their otherwise heavy teaching load."

The NYU experience seems to be of more general significance than that of Indiana. Indiana staff members are quick to point out that the Thais are very receptive to foreigners, perhaps in part because of the lack of a colonial past. An American teaching along with a Thai is readily acceptable. In neighboring Vietnam, an official of the National Institute of Administration, taking note of the counterpart system in Thailand, observed, "In Vietnam, the Thai system is impossible. We cannot have Vietnamese and Americans jointly teaching the same class. After all, every professor, including each Vietnamese professor, is supposed to know his subject." Cultural sensitivity to the narrow concept of the counterpart system

seems widespread, although where sensitivity is not found, the system may produce handsome dividends. For the most part, reliance will have to be placed on informal contacts with host country staff together with joint staff seminars and similar devices.

Participant training programs, by which current or potential staff members of the institute are sent to the United States for advanced education and observation, have everywhere been a part of the training institute programs. The extent to which participant programs contribute to the training of the trainers depends upon the number of successful participants who join the staff of the institute on return home. If there are American staff members at the Institute on their return, the participants may be assisted in applying their new ideas to the actual teaching situation.

Experience indicates that it takes anywhere from two to five persons in a participant training program to assure that one of them will become an employed staff member at the institute on their return. These proportions would hold for all countries in which a severe job shortage did not obtain. Since it is more frequent that there are more jobs than applicants, the returned participant is in a strategic position with a variety of tempting job opportunities. While the participant may have solemnly agreed to work for the institute on his return, an understanding government may relieve him of this responsibility, the institute may belatedly find it really hasn't the right job for him, or he may be permitted to pay back a proportion of his training expenses -- an item that may be picked up by his prospective employer. However, the decision as to which job to take on return is a difficult, serious matter for most participants. USC has nicely described some of the problems returned participants face: [12]

> "They worried upon their return about whether to join the Institute staff as full-time teaching associates or whether to take jobs in the government of Iran, which by that time was making generous offers to qualified young men. If they took the Institute job, they might preclude getting a first-rate job in the government; but if they took the latter choice, it would surely cancel any chance they may have had for entering the Law Faculty.
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> "It barely merits mention that half of the thirty participating scholars became involved with the Institute in one way or another in 1954. This means that they have invested five years in this program. For all of them, this represents a significant gamble. Had they chosen a career in government along the way they would have gained five years seniority; and the Law Faculty can by no means add them all to its numbers. The gamble and the hazard are clear."

What have been the results to date? USC in Iran has 10 of 30 participants teaching full-time at the Institute and five others teaching part-time. [13] Indiana in Thailand reports that "The majority of the Thai instructional staff are now participants returned from training in the United States. All but two, however, are assigned to the various ministries of the Government and teach at the Institute only on a part-time basis." [14] In Pakistan, where jobs are somewhat scarcer, Pennsylvania, although beginning its participant program somewhat belatedly, was able to get a larger percentage of its participants to accept jobs at the Institute on their return and to have them work full-time. 14 full-time Pakistani staff were on hand in the fall of 1959; although none of them were of

professorial rank, three were readers and eight were lecturers. Almost all of them had been a part of the participant program, at least on a short-term basis.[15]

It thus appears that participant training programs can produce a capable institute staff in a few to 5-7 years, depending on the advanced standing of the candidates at the time of initial participant training. Four years is not enough time to train a staff of Ph.Ds if potential staff members do not have advanced graduate standing to begin with, as Michigan discovered in the Philippines. There is always some delay in securing able recruits, and three to four years of actual study toward the Ph.D is not unreasonable for a foreign student. Experience of institute programs other than those associated with American universities confirms the fact that several years are likely to elapse from the formal approval of an institute training program and the beginning of classes. Michigan State in Pakistan began a program in 1957, but the first class was not held until the fall of 1959, even though advanced degrees were not needed by the staff or at least were not included in a part of the 9-month participant program. Experience of the Indian Institute of Administration also confirms the lag necessary between formal approval of a program and the recruiting and training of an adequate staff, ready to begin teaching.

We may conclude:

1. Training the trainers is of necessity an integral part of most technical assistance projects of the institute type at this point in time. It should be started early in the life of a project, for some years must elapse before the process is completed.

2. Exchange of views, field trips, staff seminars, and similar devices in the host country together with participant training programs appear to be the most universally acceptable forms of training the trainers. They can be reasonably effective.

3. If some advanced standing already has been achieved by the host country staff members, a minimum of 2-3 years of recruitment and preparation is likely to be needed before a balanced and well qualified host staff is available. Without advanced standing, 5-7 years is a more realistic period.

What is Transferable?

The assumption behind all the activity in establishing institutes of public administration abroad assisted by American universities is that American universities have something substantive, as well as organizational or procedural, to offer in the training field. Whether it be through direct operation of institutes abroad by American personnel for a greater or lesser period, the building of new institutions abroad, or the training of host country personnel to operate the institutes, presumably there is some contribution that American teaching of public administration can make to teaching of public administration in the less developed countries. Andre Molitor has suggested that this contribution is in the non-juridical field, as compared to the administrative law emphasis of Continental Europe and many underdeveloped countries. He has also suggested that it is a practical education emphasis as compared to the British tradition of a gentleman's education via the classics. Is Molitor correct? What has been the experience of American universities in these programs? What have they found to be transferable out of all that we call public administration in the United States?

An examination of the curricula of the several institutes is perhaps the best way of obtaining a rough idea of what American professors have thought was transferable. The new courses and curricula introduced reflect the content of public administration that they feel is cross-cultural. The startling fact is that there is a tremendous copying of courses from the American university's catalog. Apparently all our courses are transferable, with minimal adjustments such as examples being inserted from local experiences in public administration.

After a survey of what five universities were doing in regard to curricula and other institute problems of their technical assistance projects, a director of a program at a sixth institution came to the conclusion that the graduate curriculum in public administration at the host university should include the following courses: introduction to public administration, public law, research methods, research project, financial administration, personnel administration, organization and methods, accounting, statistics, and government of the host country. This was a logical conclusion from the sample of institutions surveyed, for they, too, had introduced similar courses. For example, institution A helped introduce on a required basis at the master's level: organization and management, personnel administration, bibliography and research, administrative analysis, budgeting, administrative theory, and government accounting. Institution B, also in the sample, had copied so exactly from its catalog back home that the host country director complained to the interviewer that they had had to revise the entire curriculum in order to make it suitable to host country needs.

However, had the surveyor been interested in noting certain deviations from the norm, he could have found a few. Institution C was assisting a program that featured in a typical semester: financial administration, principles of public administration, personnel administration, research methodology, organization and methods, and seminars in local government, personnel administration, and financial administration. It was also helping in such courses as comparative local government, labor administration, social welfare administration, and seminar in comparative and international administration. Similarly, institution D was helping in principles of public administration, organization and methods, public personnel management, police administration, municipal administration, public financial administration, and problems of public administration, but it also was helping in regard to planning development, comparative administration, and public welfare policy.

If the in-service training activities of the institutes are surveyed, the point is reinforced. For example, one in-service training program lists, among other courses given for the year, principles of public administration, public personnel administration, management relations, management and supervision, organization and methods, financial administration, budgeting, and similar topics. The only unusual course among the 30 listed is one on administrative economic development programs, but only 9 students registered for it, compared to between 100 and 300 enrollees for some of the others.

From a curricular point of view, the institutes assisted by the United Nations follow a similar pattern. The work for the licentiate's degree at the Brazilian School of Public Administration includes work on senior administrative personnel, organization and methods, administration of equipment, budgetary administration, present-day Latin American problems, and international administration. At ESAPAC students study principles of public law, economics, research methods, public

relations, human relations, finance and budgeting, administrative ethics, personnel administration, statistics, and organization and methods. In Turkey, more experimentation with the curriculum took place, and in addition to courses on administrative processes and techniques there were courses in public policy, programmes, and administration, which involved courses in national and local planning and the administration of programs in economics and welfare.

The Indians have probably experimented more with curricula in public administration than any other group. Partly this is due to the decentralization of control over higher education as compared with many other countries. However, partly it is due to the fact that India has pushed ahead on its development plans much more vigorously than most other nations, and this vast national effort has naturally influenced thinking about administration. India is also a country that has had its own academicians in charge of the further expansion of public administration teaching, rather than relying on outside experts to run institutes for a greater or lesser period of time and to give them shape. Thus if there is a "wave of the future" in public administration training as it relates to rapidly developing countries, it may well be evident in Indian practice. The experimentation is impressive. For example, the M.A. in public administration at Nagpur University includes papers in political organization, principles of public administration, financial administration, a comparison of the administrative systems of England and India, and personnel administration. But, in addition, three papers are to be written in either local government, municipal public works and planning, and public health administration, or economic and social administration, rural development and welfare, and the administration of law and order. In India there are many courses devoted to regional and local government, to national and local planning, and to the administration of the so-called nation-building departments. Thus Lucknow University includes regional and local administration, the public operation of business enterprises, and problems of government planning. Patna University lists local government and social administration among others. Delhi University offers a diploma in economic administration with case studies and practical training as well as consideration to such matters as principles of administrative economics and economic legislation in India. The Indian Institute of Public Administration also illustrates the Indian tendency to experiment. Of the first six special seminars or conferences held by the Institute, one was on public enterprises, a second on rural government, and a third on morale in the public service. In planning the staff of the Institute, two of the six major staff members were selected to specialize in social administration and public enterprises, respectively.

It may be objected that the analysis contained in the preceeding paragraphs is unfair, since it relies heavily on titles of courses rather than course content. It is true that a certain bias has been introduced. In the few instances in which course syllabi have been available to the writer or in the still smaller number of instances in which he has visited the classes held at some of the institutes, it is apparent that the courses that have traditional labels have made use of local materials from time to time. Yet this has largely been a process of substituting host country examples for American examples as the lecture or discussion proceeds. Further evidence to support the present analysis may be gleaned from the thesis titles of host country nationals who are candidates for graduate degrees at the host country institutes. They read much like the thesis topics of American students of public administration at an American university. [16]

In general, the curricula at the institutes that have received technical assistance from United States universities (or, for that matter, from the United Nations) are curricula that Molitor would classify as non-juridical and which, he would argue, so aptly characterize the approach to public administration in the United States. More specifically, the curricula have normally had a broad social science base with beginning and more advanced courses in the several social sciences. In regard to the narrowly public administration courses, many duplicate those found at American universities. Those that do not duplicate such courses are largely courses of greater detail, of a more applied nature, than is typical of the American university. Thus to the extent that there has been innovation, it has largely been in the direction of suggesting more "how to do it" courses for use abroad than would be approved on the home campuses of the American universities.

Within the framework of these kinds of courses, the proponents of the various schools of thought in American public administration vie. Depending on the university and individual professor involved, the institutional, behavioral, or philosophical school of thought is likely to be reflected in the course content abroad. It is not yet apparent that any new school of thought has emerged in relating public administration to the needs of rapid national development. And comparing the Indian situation with that found in countries that have received extensive technical assistance in public administration, it may be wondered if the main effect of technical assistance has not been to transplant Western institutions whether they are suitable to the new climate or not, and to discourage experimentation with new hybrids of public administration training and new ways of looking at administration. Has technical assistance in public administration become a new conservative force in the day of the headlong attempts to achieve greater modernization?

Conservative or not, there are those who would stoutly defend the present direction of technical assistance in public administration training. One scholar, so persuaded, spoke before this conference four years ago. In part, he said: [17]

> "If... industrial development occurs, as cities grow, as factory economy develops I believe the culture must change and this change, I believe, must be in the direction of using the kind of public administration with which we are familiar. The problem of transfer should become less rather than greater.... For about twenty years now, the so-called principles of public administration which we tried to establish have been under severe attack. I think it is significant that these "principles"-- or whatever we may wish to call them -- have enough vitality so that we act upon them at home and we seek to export them. It would appear that the criticism of their validity has had relatively little impact. Whether or not these "principles" and practices can be shown at the present time to be grounded in adequate study of human behavior, I believe this export is sound. We have had little choice except to follow this road."

A second participant-observer of these American university technical assistance programs has come to quite a different conclusion. Frederick C. Mosher was head of the California program in Bologna and has recently written of the program there. [18] Reflecting about the "persistently gnawing, pressing question of what should be taught," Mosher adds: [19]

> "When one stops to consider how much of what he knows, or has learned to think, about government in the United States, is important, or relevant, or even true in the Italian scene, he is likely to be surprised by his own doubts. A brief examination of some of the best and most basic of American writings in public administration reveals the very great extent to which they are "culture-bound" -- pertinent and wise in terms of our own political system but at least questionable in Italy and other foreign countries."

After reviewing the possibility of using a scientific management, a Weberian, or a behavioral approach in public administration when sent abroad on a technical assistance program, Mosher concludes: [20]

> "... there has emerged increasing agreement that the fundamental contribution (American professors) can make lies in the stimulating and guiding of the development of a field of Italian public administration by the Italians themselves."

The plea for experimentation rather than uniformity is sound, but it does not go far enough. Experimentation for what ends? Nearly all the technical assistance programs providing for public administration training abroad are connected more or less directly with efforts to accelerate national development. It is strange that so little attention has been paid to the needs of national development by these training programs. Somehow the assumption has been made that since the United States is developed and since the host country wishes to develop, if the host country adopts a system of training for the top administrative levels somewhat similar to that in the United States, national development needs will somehow be furthered. This assumption is not entirely invalid. In comparison with patterns of training for the public service in more traditional societies, the pattern found in the United States is probably better suited to rapidly developing nations. However, the real question is whether innovations need to be introduced to make it even more suitable.

With worldwide interest in and demand for community, national, and international development and with increasing emphasis placed upon the innovating bureaucrat and the innovating bureaucracy, it is time that a group of scholars began to work in a subfield that can be called development administration. Relating public administration to the needs of national development provides a common way of looking at public administration for many of the purposes of the less developed countries, and for many of the purposes of an ever-developing United States as well. We need to begin questioning whether particular techniques or methods result in contributions to national development, whether all administration and administrators are really "neutral" relative to the achievement of policy goals. And is neutrality an adequate objective? Is there not need in some systems for significant policy leadership from the bureaucracy if development potentials are to be realized, especially in the country underdeveloped politically?

"Modernizing the public services is needed to facilitate and advance the economic development efforts of governments in many developing countries," ICA points out. [21] If this is true, and there seems to be good evidence to support the statement, why not begin by thinking of the national development goals -- economic, social, and political -- as the ends to be achieved and examine the administrative system, including the training program, to see how it can make a maximum contribution to these ends? Rather than have American (or United Nations) experts in

public administration go abroad and return without ever learning what the development goals of the host country are (as has occurred in some instances), the experts would begin by examining the development goals and seek ways in which contributions could be made to them through the training program.

With such a concept, public administration becomes the science of the means of achieving particular goals. No longer are the means separated from the ends. Institutes offering training would probably begin by going along the path that Indian institutions and an occasional experimental expert have already begun to go: examining the process of planning at the various levels; the problems of community, regional, and national development; economic and social welfare aspects of administration; and similar topics. Increasingly, the examination of such subjects should be undertaken in comparative terms.

Conclusion

There is no one panacea for curing the shortcomings of administrative systems or the shortcomings of training for entry into the systems around the world. Each nation and each governmental unit, each university and each institute, and each professor and each student will have to devise its or his own way. It is far too early to assume that any system of training for the public service in existence today is the answer to the needs of the modernizing world.

While the process of experimentation should continue, certain trends are observable and certain needs are becoming evident. The notion of technical experts from abroad being imported to set up a public administration training program until host personnel can man it, is based upon a belief that urgent action is needed, a belief that is often not sound. Furthermore, this system leads to rigidity in the forms of training that are set up. Consequently, it is both desirable that we do move, and probably that we will move, away from this technique in the near future. During the next ten to fifteen years, it is probable that more emphasis will be placed upon institution-building and training the trainers. This is as it should be, providing that flexibility in the patterns of training is encouraged. If we can look ahead to the 1980s and beyond, it would appear that we will be at the beginning of an era of international exchange of information on a scale not attainable today, a day in which it will be as desirable for the United States to receive experts from abroad as it will be for it to export them, a day when the technical assistance program has disappeared in the area of public administration, and the day of free exchange of ideas has arrived.

In the interim, the world will continue to pursue its course of bettering man's existence by ever more vigorous development programs. As these take up more and more of our energies, public administration must be related to them if it is to remain a vital and living field.

Footnotes

1. See Technical Assistance Newsletter, No. 56, October 1959, p. 1.

2. United Nations Technical Assistance Administration, Training in Public Administration (New York, 1958, ST/TAA/M/13), p. 3.

3. UNESCO, 1959. The quotations that follow are taken from pp. 47, 53, 35, 133, and 58, respectively.

4. See "The Objectives of United States Economic Assistance Programs," by the Center for International Studies, Massachusetts Institute of Technology (Study No. 1 of the Special Committee to Study the Foreign Aid Program, United States Senate, 1957), pp. 56-57.

5. "Final Report on the Institute of Public and Business Administration, University of Karachi," (Philadelphia: University of Pennsylvania, January 1960), pp. 16, 17, 18 and 19.

6. "Summary Report, Program of Technical Cooperation in Public Administration for Turkey," (New York: Graduate School of Public Administration and Social Service, New York University, December 31, 1959). Quotations that follow are from pp. 10 and 13, 13, 34, and 35, respectively.

7. Richard N. Adams and Charles C. Cumberland, United States University Cooperation in Latin America (East Lansing: Institute of Research on Overseas Programs, Michigan State University, 1960), p. 203.

8. Op. Cit., pp. 18-19.

9. The latest semi-annual report, while not indicating what the current impact of the program is on the regional universities, does point out that the University of San Andres is considering an undergraduate program in public administration. See "Report of the University of Tennessee Mission to the University of San Andres, September 15, 1959 - March 15, 1960," pp. 21-22.

10. "Ninth Semi-Annual Progress Report on Establishment of an Institute of Public Administration at Thammasat University, Bangkok, Thailand" (Indiana University, January 1960), p. 7.

11. Op. Cit., p. 32.

12. "Tenth Semi-Annual Report of the Institute for Administrative Affairs, University of Tehran, for the Period March 1, 1959 - August 31, 1959" (The Institute, Tehran, September 1959), p. 12.

13. Ibid., p. 19.

14. Op. Cit., p. 8.

15. Op. Cit., pp. 26-27 and 75.

16. For examples of thesis topics, see the reports dealing with the University of Tehran and Thammasat University, op. cit.

17. "Cultural Differences and Public Administration Technical Assistance," September 7, 1956, pp. 6-9. Name withheld because paper was not for general distribution.

18. The Administrative Science Program at Bologna (Berkeley: Bureau of Public Administration, University of California, 1959).

19. Ibid., p. 23.

20. Ibid., pp. 25.

21. ICA Work in Public Administration (1960), p. 1.

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NEGRO CIVIC LEADERS

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel September 8-10, 1960

This essay is an attempt to sketch some of the more important dimensions of Negro civic leadership in large Northern cities. This subject is one of high topical interest, but this paper endeavors to serve other purposes as well. First, it may be looked upon as a set of observations about the nature of civic leadership in general. In great part what I say here could be applied with equal validity to civic leadership among big businessmen, Jews, and womens' clubs. Second, it can be seen as a portrait of one American ethnic group at a certain stage of its progress. This would make it a piece of more or less contemporary social history in the field of ethnic assimilation. Third, this paper may shed some light on the nature of the relationships between society and a subordinate group within that society. It might be applicable, in part, to the situation which develops between any two groups which coexist in the same society without sharing the same social stratification system. The problem of the Negro in America may have important parallels to any multi-ethnic society in which one group dominates another which is affected by sentiments of nationalism (or race consciousness or race pride).

The research on which this paper is based was conducted in 1958-59 on the general subject of Negro leaders and politics in Northern cities, particularly Chicago.[1] The data are derived from a series of lengthy and intensive interviews with about 114 Negroes in positions of leadership (imputed or actual) in Chicago, Detroit, Los Angeles, and New York City, the bulk of the interviews concentrated in Chicago. This was not an attempt to determine the "power structure" of the Negro community; it was an effort to learn something about what these people wanted, how they hoped to get it, and how they saw each other and the city as a whole. It represents an attempt at providing an over-view of what has been a terra incognita.

I interviewed both those who were reputed to be influential as well as those who were observed to be influential.[2] The names of the former were gathered from lists of the present and immediately past officers of the

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[1] This research is reported in my book, Negro Politics: The Search for Leadership (Glencoe: Free Press, 1960) and in my article, "Two Negro Politicians: An Interpretation," Midwest Journal of Political Science, November, 1960.

[2] Nelson W. Polsby, "The Sociology of Community Power: A Reassessment," Social Forces, XXXVII (March, 1959), 233.

principal Negro voluntary associations, plus others who were nominated by the interviewees themselves and contained in press reports of Negro civic activity. The second group was obtained by tracing the histories in Chicago of about seventeen issues, in which Negro interests were implicated, to learn who initiated action, formed organizations, acted as intermediaries, rejected alternatives, or were the objects of attempts at influence. These case histories for the most part were incomplete, as the issue themselves tended to be truncated--they were either perennial issues which seemed to have no ending, or they were attempts to affect public policy that came to nothing. Thus, the simple question, "who is influential in the Negro community, or in the city on behalf of Negroes?" has no final answer. Many people exercise limited degrees of influence; no one exercises very much.

The general arguments to be made in this paper are (1) that Negro civic leadership is coming more and more to be centered in the on-going voluntary associations and particularly in the professional staffs of these associations, (2) that this process of organization and bureaucratization has significant implications for the goals and strategies of Negro civic leaders, and (3) that the form and style of organized civic leadership among Negroes is in part "learned" from the civic life of the city as a whole. Clearly, these topics cannot be treated exhaustively here, nor can all the relevant data be presented. Unless otherwise indicated, these conclusions refer to Chicago--although, as will be seen, comparisons with other cities are inevitable. The paper is neither strictly theoretical nor simply empirical. It is an attempt to interpret some of the findings of my research by stating the most general conclusions in the broadest terms in hopes of raising useful questions pertaining to the processes of civic leadership as a whole.

ORGANIZED NEGRO CIVIC LEADERSHIP

In an earlier era, civic relations between Negroes and whites were fragmentary. The Negro was "represented" by prominent individuals who had either risen to the top in some career within the Negro community or who had obtained the favors of an influential white. Ministers, doctors, lawyers, undertakers, Pullman porters, and Post Office clerks conducted whatever liaison existed between Negroes and whites in the affairs of the city.[1] Negro grievances were taken to powerful or sympathetic whites by a few Negro intermediaries or by delegations of "accepted" leaders

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[1]See the nature of Negro leadership and its responses to a dramatic crisis in the history of the Chicago race riot of 1919: Chicago Commission on Race Relations, The Negro in Chicago (Chicago: University of Chicago Press, 1922).

calling on the appropriate official. There were few on-going voluntary associations of any significance, and almost none which had any kind of staff, professional leadership, or funds. Civic leadership, to the extent it existed at all, was the part-time responsibility of prominent men and women who sought to transform their prestige in one area of life (e.g., the ministry, society, or the law) into the prerequisites of community representation. Since the end of World War II, but particularly since the 1950's, this pattern has been partially (though not entirely) replaced by a newer pattern in which civic leadership is vested in established voluntary associations which have a lay board, a professional staff, and a modest budget. These groups, particularly the NAACP and the Urban League, appear to be the principal actors in Negro civic affairs. They are the groups whose moves are most closely watched and whose actions are taken into account by other, similar groups elsewhere in the city. This new center of civic action can be described in terms of the rise of new leadership groups, the organization and bureaucratization of race relations, and the agenda of the race organizations.

Rise of New Leadership Groups

There has been an important shift in the occupational sources of Negro civic leaders, particularly those recruited to the offices of the principal Negro voluntary associations. The most obvious change has been the decline in the importance of many kinds of jobs as reservoirs of civic leadership. As Drake and Cayton noted, in the 1930's the Pullman car porter, the postal worker, the Red Cap, the clerical worker, and the skilled laborer were accorded relatively high status within the Negro community.[1] These jobs represented a kind of affluence, prestige, stability, and literateness which were uncommon and hence valued commodities among Negroes in the depression years. The offices of the social and civic clubs drew heavily on these groups, although even then the pre-eminent position of Negro lawyers, doctors, and ministers was undisputed.

Today, the Negro lay civic leader is drawn almost exclusively from business and professional occupations. Early in the 1950's, a Negro postal worker was president of the Chicago NAACP; since then, the

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[1]St. Clair Drake and Horace Cayton, Black Metropolis (New York: Harcourt, Brace & Co., 1945), ch. 18, 19. On the relationship between social stratification and voluntary associations see Howard M. Brotz, "Social Stratification and the Political Order," Amer. J. of Sociology, LXIV (May, 1959), 571-8.

presidents have never been drawn from that or comparable sources.[1] Negro representation on the board of the Urban League has similarly been given over almost entirely to business and professional men (and some of their wives) plus Negro staff members of large local and international unions.

The change in the occupational sources of Negro civic leadership in voluntary associations has had important consequences. In some cities, notably Chicago and Los Angeles, it has been related to a protracted and debilitating conflict within these associations. The sources of this conflict are difficult to specify with certainty. Clearly, however, the history of such groups as the Chicago NAACP since World War II has been one of constant internecine strife, interrupted by brief periods of relative calm.

One aspect of this conflict has been the challenge to the middle-class leadership of businessmen, professional men, and some ministers posed by the rise of Negro labor leaders. This can easily be exaggerated, inasmuch as many Negro union officials are fully as conservative in their approach to race relations and organizational strategy as businessmen. The millenium in Negro leadership which was anticipated with the advent of Negroes into positions of power in the American labor movement has not materialized. In great part this is due to the fact that Negroes, like other groups, obtained office in established organizations and acquired with that office a set of constraints which organizational life imposed. Negro leaders of Negro locals were often (as in parts of the AFL) isolated from the centers of influence in the international or they were bound up with the internal politics of the union. On the other hand, Negroes who were staff members of unions often lacked an independent base of power within the international and (with the exception of a few militant Political Action Committee activists) functioned strictly within the labor bureaucracy. Thus, when the Chicago NAACP was split between moderates and militants, the business and professional men found numerous allies among Negro labor representatives. Still, a main source of cleavage among Negro civic leadership arose from the challenge of certain Negro labor groups. In Chicago these have come out of the United Auto Workers.

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[1]The changes in the Negro community are suggested by the differences in the distribution of incomes between 1950 and 1956. The 1950 census estimated (on the basis of a 20 per cent sample) that there were, in all of Illinois, 365 Negro males with an income of $10,000 a year or more (as compared to 71,590 white males). The Chicago Supplement to the 1956 National Housing Inventory estimated (based on a sample of 5,500 dwelling units) that there were, in the city of Chicago, 5,897 Negro families with an income of $10,000 a year or more (as compared to 82,666 white families). Allowing for differences in sample and definition of income unit, the increase in the number of Negroes in the upper income levels is nonetheless striking.

In the five Chicago NAACP annual elections since 1955, there was a clear split between militant and moderate factions. In the election contest, the moderates usually had the support of most Negro business and professional men, most of the prestigious ministers, leaders of AFL unions, and (since 1957) the regular Democratic organization. The militants, on the other hand, could count on the support of the United Auto Workers locals, some ministers, intellectuals, remnants of the Socialist Party, and others. Other labor unions (such as the Packinghouse Workers) vacillated. The early stages of this struggle were seen by many as the result of the efforts of some labor leaders to challenge the established leadership of the Negro middle class. The rise of ambitious Negro labor leaders was, of course, only one aspect of the controversy. Related to it were differences of opinion over goals and tactics as well as clashes of personalities. Despite these complexities, however, an important consequence of this factional warfare has been that labor leaders are now an important source of power in the electoral politics of the local NAACP, even though these leaders are often divided among themselves.

In Detroit, where the UAW enjoys a predominant position in the labor movement and in the community, liberal labor leaders have been a source of stability rather than conflict. The Detroit NAACP has enjoyed a relative freedom from bitter factionalism and a stable leadership pattern. In cities where such unions are weaker or divided, such as Chicago or Los Angeles, a conflict has ensued between this wing of labor and more conservative Negro groups.

The extent to which the established, middle-class Negro leadership of northern NAACP branches is threatened by either labor or other new leaders is problematical. But even those leaders who are not replaced by militants feel the pressures for increased involvement in community affairs and must respond, in some measures, to the economic and social goals of these new forces. The possibility of working exclusively in alliance with conservative groups has greatly diminished. Nonetheless, it is still too early to argue, as some observers have done, that "the old NAACP is dead and nothing will bring it back to life."[1] Civic leadership, at least in the North, will remain for some time the province of these negroes with the resources (status, income, free time, etc.)

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[1]Cf. Paul Jacobs, "The Negro Workers Asserts His Rights," Reporter, July 23, 1959, pp. 16-21, and Will Chasan, "American Labor Attacks Its Own Segregation Problem," Reporter, May 1, 1958, pp. 27-30, and New York Times, Sept. 24, 1959, p. 1.

necessary for such work. It is principally as a national organization that the NAACP is in danger of following rather than leading portions of the Negro community as a result of such Southern events as the boycotts and student sit-in movements.[1]

These changes in the sources of Negro civic leadership have tekan place simultaneously with a marked decrease in the number of whites within leadership positions of some Negro voluntary associations, especially the NAACP. From its inception through the 1930's, the NAACP locally and nationally had a large number--sometimes a majority--of white members. Today, the national board has shifted to a Negro majority (36 out of 48 members), and the local chapters have become overwhelmingly Negro. The once-predominant position of whites in the association nationally is symbolized today in the election of a white person to the office of national president; locally, the branch associations have very few whites in official positions. In Chicago, for example, the groups which have controlled the NAACP in the last three years have kept one white person (a housewife) on the executive committee as a showpiece. Whites have found themselves, in some cities, in the position of having the kind of "token" representation once accorded to Negroes.

The whites which have remained in the NAACP have, in many cases, been both the most liberal and the least prestigious. Formerly, whites with considerable standing in the community were active in the NAACP (and by their activity, tended to dominate it); today, those who remain are often labor leaders and intellectuals who form part of the militant faction within the association. Those whites who remain have been identified as a source of radicalism in the Chicago branch and on occasion the dispute between militants and moderates has acquired the overtones of a Negro-white conflict. Reasonable men of both races have deplored this, and efforts are always made by the white militants to recruit more vigorous Negro leaders to their cause in order to lessen the appearance of "white infiltration."

The Organization of Race Relations

The changes in the character of Negro civic associations cannot be ascribed simply to changes in the social structure of the community, however. At the same time there have been important shifts in the character of the organizations themselves. The NAACP in particular has been modified. The membership figures for NAACP branches in ten large

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[1]Cf. Southern Negro criticisms of the NAACP in New York Times, April 17, 1960, and Louis E. Lomax, "The Negro Revolt Against 'The Negro Leaders'," Harpers, June, 1960, pp. 41-8.

northern cities[1] reveals a fairly consistent pattern, with certain exceptions which can be accounted for on the basis of local circumstances. In such cities as Chicago, Detroit, Los Angeles, and New York, for example, NAACP branches have gone through five distinct phases since the end of World War II. In the first period (1945-48), there was a general decline in membership from the wartime peaks. This was followed by a second period (1949) in which membership fell precipitously (as much as 1/2 to 2/3) as a result of an increase in the minimum dues from $1 to $2, effective that year. In the third period (1950-54), most branches slowly and painfully rebuilt their membership, although never to the previous levels. Then, in 1954, the U.S. Supreme Court decision provided an immense stimulus to membership campaigns, and in this fourth period (1954-56) membership figures increased sharply. Finally, from 1957 until the present, there was a general levelling-off of membership followed (in 1960) by signs of what may be a new decline as a result of national interest in the Southern sit-in movement and the successful fund-raising of CORE, the agency most closely identified with the sit-in strategy. Local conditions, of course, modify this general pattern somewhat. In Los Angeles, internecine warfare has prevented the branch from conducting any well-organized membership campaign, and enrollment has fallen drastically since 1956. In New York, despite the presence of about one million Negroes, the local branch, with generally weak leadership and to some extent overshadowed by the national headquarters located in the same city, had only 2,112 members as recently as 1954 and today has fewer than 10,000.

These membership figures suggest, and interviews in the cities concerned confirm, that NAACP membership is more sensitive to national rather than to local conditions. The most important factors affecting membership have been the return to peacetime pursuits after the war, the increase in membership dues, and the diversion of Negro funds to the Southern sit-in movement (all of which reduced NAACP membership), and the Supreme Court desegregation decision (which increased membership). Although local leadership can and does affect these figures, the effect appears to be really significant only where there is a near collapse of that leadership and a real failure to organize a campaign. Otherwise, given at least a reasonable amount of cohesion, organization, and initiative, the local leadership can attract members seemingly irrespective of whether that leadership is militant or moderate, radical or conservative, labor or business.

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[1]Baltimore, Boston, Chicago, Cleveland, Detroit, Los Angeles, Philadelphia, San Francisco and St. Louis. All figures are from the official records of the NAACP national headquarters in New York City.

Broadly speaking, the NAACP is an organization with a national "constituency" and a local "membership." Most members belong because of concern for the national, or the Southern, program of the association, and changes in the fortune of that program are a principal factor affecting membership levels. At the same time, these members join through local branches and become to some extent involved in the local conflicts over office and polciies which grip many of those branches. The NAACP is thus in an ambivalent position. As a result of certain favorable events nationally, the NAACP was able to improve its position. This naturally had as one consequence an improvement in the position of the local branches as well. But as the status of and membership in these units increased, problems arose.

Formerly the NAACP was simply a "headquarters" organization which maintained a national staff to deal, principally through the courts and national lobbying, with issues affecting the Negro generally, but particularly in the South. The local chapters were often, in Philip Selznick's words, tax-collecting units intended only to provide the national office with resources.[1] The NAACP was frequently criticized by such men as Ralph Bunche and others for lacking a true "mass base" in the Negro community. With the dramatic victory of May, 1954, in the Supreme Court school desegration case, the appeal of the NAACP was enormously enhanced. Thousands of Negroes who had been unaware of, indifferent to, or suspicious of the NAACP were suddenly caught up in the popular enthusiasm for its cause. Membership figures in many large cities soared. The national office was undoubtedly gratified, for it meant an opportunity to improve its financial position and its relations with local communities.[2] At the same time, however, this change created problems. The growth in size and resources of the local chapters since the 1949 low led local leaders to explore the possibility of developing a local civil rights program of greater significance than simply providing legal protection to harassed Negroes.

The attempt to develop a local program has in some areas strengthened the position of Negroes in community affairs but it has also

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[1]Cf. Philip Selznick, Leadership in Administration (Evanston: Row, Peterson Co., 1957), pp. 52-3.

[2]Roughly one-half of each membership dues dollar is retained by the local chapter; the balance is sent, along with certain special monies such as the proceeds of Freedom Fund Dinners, to the national office.

created new sets of problems for the Negroes themselves. First, it has exposed some of the conflicts among ends and interests latent within the Negro community. These strains have frequently been intensified by the internal politics of the association. When leaders feel the need for local program development in order to maintain their positions within the organization, the conflict over office becomes inextricably linked with the conflict over ends, and vice versa. It must be emphasized that disputes over local program do not usually affect the leader's standing with the rank and file. Mass participation in the NAACP is so low that the average member is unaware of intra-organizational conflict. It has been argued that individuals typically join the NAACP because of its national, not its local, role. The conflict over the local role of the NAACP takes place almost entirely within a very small group of attentive activists. (This indicates that, for most purposes, the cleavages found in Negro civic affairs are cleavages within the middle classes, rather than cleavages between classes. Challenges to the middle-class Negro civic leadership, when they occur at all, usually occur from outside the NAACP--as in the case of the March on Washington Movement or the Southern student sit-in movement.) Internal conflict within the NAACP is often the result of tensions between what a moderate Negro officer thinks is appropriate action and what the militant activists in the organization demand of any incumbent of the office. Inasmuch as the NAACP elections can be influenced by other formal groups (such as large churches, unions, or political parties), and since these large groups are usually more conservative than the more militant Negroes and whites within the association, it often transpires that formal leadership is vested in moderate or conservative leaders while such of the volunteer labor is performed by the militant activists. It is between these two groups that conflict generally arises. (In cities such as Detroit, where the most powerful outside groups--the labor unions--are not conservative, the likelihood of this tension between formal officers and volunteer activists is reduced.)

The second problem with local program development within NAACP branches is that it tends to bring local Negro leaders into conflict with city political and civic groups. Not only is the internal position of Negro leaders complicated by local program, but their external relations as well. Negro leaders, even conservative ones, whose organizational position is linked in some measure with local program in addition to fund-raising for national programs, are brought into conflict (sometimes against their desires) with city politicians over such matters as de facto school segregation, housing, and public safety. This conflict for a Negro businessman-civic leader has two important consequences: the Negro is required to play a role which is often at variance with his own conception of the proper function of civic leaders, and he is brought into "unpleasant" contact with men to whom he often

looks (in other spheres of his life) for rewards. Negro businessmen--who are often vulnerable to reprisals from white business and political leaders through either economic and political sanctions or the withholding of sought -after prestige and acknowledgement-- must deal with influential whites in what is often an adversary relationship.

Theoretically, such problems in Negro civic leadership ought to be solved by a "division of labor" between protest leaders (who would be both militant and relatively invulnerable to reprisals) and bargaining leaders (who would be moderate and prestigious).[1] Each group would function through a separate organization with a distinct character. In fact, such a division rarely occurs in the Negro community in the North. This is particularly true with the new-found power of the NAACP to confer relatively high status on its leaders. Moderates as well as militants seek this status, and the character of the organization is thus determined, not by some rational allocation of functions to it, but by the outcome of this factional warfare. Thus, the political "style" of a Negro civic organization cannot be predicted in advance on the basis of its name only. Depending on the city, the NAACP may be moderate and the Urban League militant, or vice versa; or both may be moderate; or both may be relatively militant.

The Bureaucratization of Race

A rise in importance of the professional executives of Negro civic associations has occurred in some cities simultaneously with the changes in social structure and organizational characteristics suggested above. The Urban League has always been a professionally-staffed organization in the major American cities (it has 63 affiliated units), but only in a few cases has it been able to expand its staff significantly. Such expansion has, however, taken place in Chicago, where the annual budget has risen from $70,000 to over $200,000 in less than four years. The Greater New York Urban League is comparably large. These, however, tend to be the exceptions. In many cities, the Urban League is part of the Community Chest or similar unified fund drives, and receives its money by allotment from that city-wide organization on the strict understanding that it will not engage in independent financial campaigns. This places a limit on the budget of the League, reduces the extent to which increased prosperity in the Negro community will be reflected in increased resources for the League, and places an important set of constraints on the freedom of action of the League staff.

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[1] On such a division of labor in the South, see H. D. Price, The Negro and Southern Politics (N.Y.: New York Univ. Press, 1957), p. 68.

In Chicago, however, we can see some of the consequences of having developed a sizeable agency with a large professional staff to deal with a whole range of problems facing the Negro community--industrial relations, community organization, housing, health, education, and welfare. There has been limited growth among other Urban League affiliates, and in a few cases (including Chicago), NAACP branches have been able to hire full-time executives. In addition, as the various associations gather larger resources and as they become more experienced in race relations, they tend to recruit better-trained, more sophisticated Negro executives. Older executives, who sometimes were either moderate in their political style or who were intemperately militant and even radical, are being replaced by a younger group who are both militant and more skillful. Sometimes these changes are prompted by a crisis within the organization itself. The Urban League, since it draws heavily upon the support of white businessmen who often look upon the League as a service agency for their industrial relations departments, can permit staff aggressiveness only up to a certain point. A previous executive of the Chicago Urban League, for example, was fired and the League reorganized in 1955-56 because of charges that the executive was both too radical and a poor administrator. The League managed to hire a new executive who was a clearly superior administrator but who proved to be every bit as militant as the former one. It is misleading to discount the League on the grounds that its "business backing" necessarily means a moderate and quiescent staff. It is more correct to say that white business supporters are usually either ignorant of many of the activities of the staff on race issues or relatively indifferent to such activities so long as they are carried out within a defined area of expectations. For example, a staff can press for FEPC legislation, even though many business supporters of the organization oppose it, because (a) FEPC is not felt to be a threat of major proportions, (b) some such activity is essential if the organization is to attract Negro support, and (c) businessmen have learned to "expect" this kind of campaign. On the other hand, should the organization try to "plant" a Negro family in a white neighborhood, it would almost certainly be opposed by business supporters even though it posed no threat to the businesses themselves. Such organizational activity would be deemed "improper" (i.e., outside the area of expectations) and might well upset the expectations <u>other</u> businessmen have as to the kinds of activities it is appropriate <u>for</u> League businessmen to support.

The growth in professional staff in a Negro civic association has important implications. One of these, of course, has been that the agency acquires a new, or at least more compelling, set of maintenance needs. Large budgets, and hence intensive fund-raising campaigns, become not simply desirable but essential if the staff is to be sustained.

It is the staff which organizes and directs these campaigns, and its interest in the success of the campaign is fairly clear. Stated more formally, these civic associations must now be able to distribute tangible rewards (salaries) to participants as well continuing to distribute intangible rewards (prestige, publicity, a sense of purpose or mission). The task of accumulating and dispensing these incentives is not simple, and often conflicts appear among people receptive to different kinds of rewards. One such conflict, between moderate business, professional, and ministerial groups on one hand and certain labor and white groups on the other, has already been sketched. This cleavage might be restated as one between those who value the solidary attributes of the association (which include conviviality, prestige, publicity, and access to important functions) and those who value its purposive attributes (including ideology and the need for rapid social change).

High budget commitments mean that Negro civic associations are led into greater competition for scarce resources. This competition rarely becomes open conflict, and often is denied in principle and muted in practice. The resources for which these groups compete include issues and prestigious names as well as money. There is a relative scarcity of all three. At present, some of the major ends being sought are largely undefined. The field of housing, for example, has become of primary importance to most Negro groups in the North, but no real strategies or targets have been decided upon and, indeed, there is little agreement as to what constitutes the crucial elements of the issue. Inter-organization jurisdictional disputes, as well as intra-organizational end conflicts, are less frequent when the goals being sought are broad, general, and ill-defined. Securing prestigious individuals is somewhat more competitive. There is remarkably little overlap between the boards and offices of the NAACP and the Urban League, particularly in those cities (such as Chicago) where there are real differences between the groups in ends and tactics. Thus, Negro civic groups (like all others) compete for money (which is always scarce), prestigious, status-conferring names (which are also scarce), and issues (which are not scarce, particularly so long as they are treated only in generalities).

When the burdens of civic action are transferred to a professional executive, the lay leader (president, board chairman, etc.) is relieved of much that is onerous. A smoothly-functioning voluntary association, guided by professional, may thus make it somewhat easier to recruit lay leaders. (In fact, of course, professionalization often increases the work load of lay leaders inasmuch as the staff is usually anxious to promote an elaborate and vigorous committee system that makes heavy

demands on the time of those willing to serve. This committee system is the principal means, other than by simply having a near-monopoly on information, that the professional produces acceptance among his nominal superiors for the goals and tactics he selects.) One consequence of the shift in leadership initiative from the lay to the professional leader is that lay leaders tend to become more and more specialized by areas of competence. In an older era, spokesmen who conduct the "foreign affairs" of the Negro community (for example, ministers) played highly general leadership roles across a wide range of issues. To the extent action was initiated or alternatives blocked, these men did it. Today, lay leaders tend to be functional rather than general, reflecting both occupational background and the committee structure of voluntary associations. Different groups of Negro spokesmen are led to act on different issues by professional executives. It thus becomes as difficult to speak of "power elite" or "power structure" among Negroes as it does to speak of the equivalent in the city as a whole.[1]

Groups such as the Chicago Urban League concede the necessity of coopting "representatives" of important elements in the community, but they have preferred to recruit individuals who would acquire a civic reputation as a result of their participation in League activities. The League has reduced the co-optation of individuals already endowed with prestige as a "civic leader" who simply bring to the organization their name for whatever symbolic value it may have as a source of legitimacy. In part this de-emphasis of the "big names" reflects the high budget levels of the League and the necessity of an active and dedicated fund-raising board of directors. Board membership in the League can confer relatively little status on a man who already possesses a great deal from other fields of endeavor, and as a result, the rewards of office may not be high enough to induce a strong effort at fund-raising; on the other hand, for a young person who has yet to make his mark in his chosen profession, League office may be sufficiently attractive to induce a considerable outpouring of energy. Of equal or greater importance is the fact that younger, less experienced civic leaders can more easily be "educated" by the staff into what it deems a correct understanding of goals and tactics. In a sense, recruiting relatively unknown men by offering them the rewards of prestige and recognition is a way by which the staff can control its own board.

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[1]Cf. Ernest A. T. Barth and Baha Abu-Laban, "Power Structure and the Negro Sub-Community," American Sociological Review, XXIV (February, 1959), 69-76. For a general argument that "power" findings tend to be an artifact of method, see Nelson Polsby, "Three Problems in the Analysis of Community Power," American Sociolgical Review, XXIV (December, 1959), 796-803.

A final implication of the steady professionalization of race is the altered character of co-operation between Negro and white associations. Northern cities vary greatly in the extent of active collaboration between whites and Negroes in civil rights issues. There has clearly been more in Detroit and New York, for example, than in Chicago. Many reasons, not all of which are fully understood, account for this. One of the most important, it seems, is the degree to which powerful organizations exist in the community which have, for a variety of reasons, a commitment to liberal goals. In the case of New York, this would include the many sizable Jewish voluntary associations; in Detroit, the CIO would be significant. Further, white-Negro co-operation seems to reflect past successes. Nothing improves civic collaboration as much as legislative victories, the credit for which can be broadly shared. Victories are few in Chicago and Illinois; liberal organizations are neither numerous nor powerful; and co-ordination, as a result, has been poor.

In Chicago, the increased professionalization of race relations agencies has improved somewhat the extent of Negro-white co-operation in this area. Voluntary associations are more and more being operated by professional executives who often have more in common with each other than they do with their respective lay constituencies. They share a more or less common background of educational and professional experience and, although they are under strong constraints as operative heads of the associations they must maintain, there is a generally free interchange among them which is only disrupted when the matters at issue strike at the identity and autonomy of a co-operating agency.

The two major Negro civic organizations in Chicago, the NAACP and the Urban League, have undergone a significant transformation since World War II. In the first period, there were active as leaders of these associations more or less militant lay officers assisted (or guided or prodded) by small staffs composed, in remarkable degree, of individuals who were personally independent, unco-operative, militant, and unpredictable. In the second period, beginning about 1956, both agencies acquired staffs which, while still militant, were more likely to work in less spectacular and more predictable ways and co-operate with other groups. It is these leaders of the "second generation" who have established far better working alliances with white liberal organizations.

It is tempting to formulate a theory to account for this shift. One might say that as a reform group--such as the NAACP--grows in size and prosperity, and as it becomes more secure as the unchallenged

protest agency, its maintenance needs are altered. In the earlier period, the organization is both small and relatively insecure, and its maintenance requires primarily the assertion of its own identity. It fights off challenges from rival protest groups. It feels threatened by better-staffed agencies. It recruits staff willing to accept little pay and the necessity for vigorous and attention-getting action. In the later period, its identity is clear and its jurisdiction, although vague, is not questioned. It can also afford to hire executives who demand better pay for their services. It can afford the luxury of co-operative endeavors in which the agency's reputation and the possible pay-offs from civic success can be shared in some measure with other groups. The difficulty with such theorizing, of course, is that we are offering post factum explanations for one case (Chicago) and we are ignoring the changes in the character of the lay leadership of the agency and the consequences of this change for intra-organizational politics.

The Agenda of Race Organizations

Negroes wield relatively little influence on the course of civic affairs in Chicago. Few of their proposals (FEPC and fair housing laws, for example) become public policy. Only occasionally are they able to block the proposals of others. (Urban renewal and redevelopment has proceeded in Hyde Park-Kenwood and elsewhere even though Negro interests were affected and some Negroes protested. Negro leaders were able to delay the building of a branch of the county hospital by raising the question of segregation in a manner that gave pause to whites who had not been aware that this was an issue.) Negroes are important, but usually only in the sense that they are a large body of people whom others must take into account in making decisions. Negroes "influence" public affairs more by their presence than by the activity of their leaders.

Of the seventeen issues examined in Chicago, the problem was raised or the issue created by whites and white groups acting on behalf of Negroes in three cases, by both Negroes and whites in seven cases, and by Negroes alone in seven cases. In nine cases, little or nothing resulted--i.e., Negro demands did not affect public policy or private actions. In four cases, minor changes were noted--the Mayor was interested in problems of private hospital discriminations, there was a slight improvement in police protection for Negro areas, there was a slight lessening in police maltreatment of Negroes, and relocation procedures in urban renewal were improved. In four other cases there was a clear impact on public policy--a shakeup occurred in a district police station in order to intensify narcotics investigation,

a new vocational school was constructed, the building of a county hospital branch was delayed significantly, and some Negroes were hired at a downtown bank.

Several aspects of these limited successes are of interest. First, the ends successfully sought for the most part rested on demands for public services or minimal standards of justice that are difficult for whites to deny or reject (at least publicly). They seemed to be demands for things that any citizen was entitled to as a matter of principle. They were, compared to demands for equal opportunities in housing and employment, relatively uncontroversial and easy to justify, although not easy to obtain. Second, they were demands which in most cases involved only the Negro community and not the city as a whole. Relatively few whites would be affected by the attainment of such ends. In the case where whites were significantly implicated--the demand for Negro employees at large white banks and the placement of Negro physicians in white hospitals--the greatest effort was required. In the first case, a picket line was organized over a period of many days. In the second case, a sustained effort has thus far produced only an interest and some action on the part of the Mayor. Finally, most of the issues which made some progress were not part of the agenda of the existing voluntary associations.

In the instances in which relatively dramatic and clear progress was registered by Negroes--the police district scandal, bank picketing, the new vocational school, and private hospital discrimination--the effective agents of change were ad hoc groups, individuals, or city commissions. Although neither the NAACP nor the Urban League was indifferent to these matters, for a variety of reasons they tended to stay out of them. In two cases (police scandal and bank picketing) the issue seemed to be in the hands of people of uncertain reputation, of lower-class backgrounds, or of dubious motives. In other cases the voluntary associations were divided as to ends or tactics, and hence prevented from acting vigorously.

It has been frequently observed that established Negro civic organizations in the North lack the capacity for mass involvement. Almost no on-going Negro voluntary association is capable of, or inclined to, protect tactics which require sustained mass action (picketing, boycotts, voting reprisals, demonstrations, etc.)[1] Fundamentally, this incapacity and disinclination reflect the class and status position of Negro civic leaders in these associations. The Negro middle class, like any middle-class group anxious to maintain status distinctions, has little taste or talent for mass leadership.

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[1]Cf. Herbert Garfinkel, When Negroes March (Glencoe: The Free Press, 1959), ch. 6 and Epilogue, and Louis E. Lomax, op.cit.

Further, many individual civic leaders are personally vulnerable, or think themselves vulnerable, to reprisals from whites (or other Negroes) who are threatened by any serious protest activity. When an organization acquires a professional staff, it acquires individuals who have a direct interest in avoiding action that will divide the organization or place it under duress. It acquires people who suffer from all the limitations (education, articulateness, and social conservatism) that separate middle-class leaders from the lower-class led. Thus, when Negro "sit-in" campaigns began in Southern lunch counters, sympathy moves in the North were conducted for the most part by students (and mostly by white students). Northern Negro organization, such as the Chicago NAACP, could with great effort place a token picket line around one store once a week, in which the picket-line members were often Negroes serving an uncomfortable two-hour duty of a largely symbolic sort. Further these northern boycott efforts were generally unsuccessful. Negroes in Harlem and Brownsville continued to patronize the stores.

The issues placed on the civic agenda by the middle-class voluntary associations may very likely be issues which (a) are general and wide-reaching in nature, (b) place a high value on the expertise and special knowledge of a professional staff, and (c) represent demands made on behalf of middle-class Negroes (for the right to buy homes outside the Negro ghetto, for example). Another range of issues will be thrust to the foreground by the demonstrations and outbursts of rank-and-file Negroes, led either by genuinely disinterested and selfless men or by those who seek to exploit race issues for their own advantage (or, what is more likely, by men who are a curious amalgam of the selfless and the self-seeking). When this happens, the established voluntary associations tend first to retreat from the issue, then offer tentative and sometimes reluctant support. This has been the case with the Negro "mothers' strike" against a public school and the issue of hiring Negro liquor salesmen in Harlem and with the bank picketing and vice scandal issues in Chicago.

The importance of this lies in the possibility that the emerging center of gravity in Negro civic life--the established voluntary association-- may be pursuing ends which neither reflect the direct and tangible interests of Negroes nor represent the areas of most likely success. Other areas, of less interest to the voluntary associations, may engage the attention and activity of Negroes and constitute the most vulnerable points in the defense of the larger community. The "agenda" of the voluntary associations may well be significantly different from the agenda of the Negro community.

Voluntary associations, professionally staffed and attracting middle-class leaders interested in local programs, seek the broadest goals; fair employment and fair housing legislation, school redistricting to end "de facto" segregation, and so forth. A mass response seems to be elicited more frequently by issues which are narrow in scope and immediate in their possible rewards: improving standards at a school in Harlem, picketing a bank for jobs, protesting vice conditions in a neighborhood, etc.

CITY INFLUENCE ON NEGRO CIVIC LIFE

The pattern and style of Negro civic leadership varies from city to city. Many of these differences can be accounted for by factors internal to the Negro community--the abundance or scarcity of resources, the level of Negro business, the quality of the Negro press, etc. A full explanation must, in addition, consider the impact of the city as a whole on Negro life. Civic leadership can be viewed, in part, as a set of "learned responses" which individuals and groups acquire from their experiences in the city. As ethnic groups emerge into a state of self-conscious activity and individuals seek to capture the leadership of these groups, the nature of that leadership will be significantly conditioned by the character of civic life in the total community. Social structure and organizational maintenance can account for much of the civic leadership of a sub-community, but it can be argued that the city itself is an important teacher. The final point which this paper attempts to make is that as Negro civic life becomes more organized and more middle-class, it also acquires certain modes of behavior from its environment. The city influences the pattern of civic life among its constitutent sub-communities by the avenues of upward mobility it provides and by the intermediate civic organizations it contains.

Mobility Paths

The role of the Negro middle-class as the predominant influence in Negro civic organizations is important but complex. In Chicago, business and professional groups have been associated principally with a moderate political style and a preference for bargaining rather than protest as the proper civic strategy. In los Angeles, on the other hand, Negro lawyers and other professional groups have led the more militant wing of the NAACP while some labor leaders have been placed on the defensive as the more or less moderate faction. The difference among large cities in this respect seems to be in part a function of differences in the political and civic organization of the cities as a whole. In Chicago, the political life of the city is highly organized

by a strong machine which defends, in great part, the racial status quo at the same time it is providing opportunities for (and thus constraints on) young lawyers and others with ambition. The upwardly-mobile young lawyer, who in so many communities provides, out of his ambition, the stimulus for social change is, in Chicago, quickly co-opted into politics or is deflected into conservative law partnerships. In Los Angeles, where politics is more open and less organized, where Negroes have been by and large denied access to elective office, and where there is not the patronage that could provide for the appointment of a significant number of Negroes to positions of a political nature (and hence with political constraints), there is more incentive and opportunity for Negro professionals to attack the status quo and associate themselves with such movements as the Democratic Minority Conference in its campaign to secure more Negro representation in politics and the favorable resolution of certain race issues.[1]

The attempt to attain some goal in the affairs of the city usually involves the effort to anticipate and prevent organized criticism from developing. The more groups whose presumed representatives or spokesmen can be reached and persuaded not to object (either by convincing them of the merits of the proposal, disarming them by giving them a part in its advocacy, or employing rewards and sanctions), the greater the likelihood of success. Opposition must be neutralized in advance by legitimizing the proposal through the public display of a committee of leading citizens who are "representative" of a "cross-section" of the community.

Various large cities can be distinguished by the kind of "representatives" to be found involved in the course of important civic issues. In some cities, such as Chicago, the Negro representative involved in an issue will usually demand very little in terms of substantive changes in the proposal itself as a condition of his defending it publicly. The rewards of civic leadership do not come primarily from modifying policies; rather, they come from earning prestige, holding office, or improving one's career or business.

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[1]There were, in mid-1959, about 38 Negro lawyers holding patronage positions in various levels of government in Chicago. In an earlier study, it was estimated that over half of the 225 Negro lawyers in Chicago were active in some aspect of politics--holding offices or jobs, serving as precinct captains, running as a candidate, or obtaining clients and references from political sources. See William Henri Hale, "The Career Development of the Negro Lawyer in Chicago," (unpublished Ph.D. dissertation, Dept. of Sociology, University of Chicago, 1949), p. 74.

Public appointive positions are held primarily by this kind of person in Chicago for several reasons, the most important of which is the fact that such positions are controlled by a powerful and secure political organization which can recognize men on its own terms (i.e., select appointees on the basis of party regularity, insist that the appointee support the party leadership, etc.).

Where the political party is less powerful and less secure (i.e., where, as in New York, defeat is a real possibility and the party leadership itself is divided or weak, the political leaders endeavor to attract the kind of men to appointive position who can make up for the shortcomings of the party by bringing to the administration their own prestige, followings, or personal stature. To attract these men, however, the price is higher. Some deference must be paid to the demands such individuals make for modifications of public policy. Such prestige as these men have derives usually from their position in voluntary associations or in other realms of public life. This prestige must be sustained by civic "accomplishments" or at least the appearance of accomplishments, and this in turn can only come from attempting to influence public policies and civic issues.

These men who are issue-conscious are playing to a different "audience" than less issue-conscious leaders. The standing of the former in their audience depends in part on how well they measure up to the expectations of that group. The audience rewards its members by conferring prestige upon them. The groups and organizations to which men turn in order to acquire that prestige differ from city to city. Thus, another important distinction between communities is in the character of the principal status-conferring organizations.

Organizational Posture

The principal organizations in which Negroes participate in northern cities vary in character and thus in the kinds of behavior they reward. One difference between New York and Chicago, for example, lies in the extent to which there are in the former city a greater number of organizations which reward outspoken, militant behavior on the part of Negro civic leaders. In the latter city, there are very few such groups in which membership is both highly attractive and also requires a certain civic vigor on behalf of Negro causes. The "posture" of the most prestigious Negro-oriented organizations in New York is more militant than that of similar organizations in Chicago, and hence militancy acquires more prestige in the former than the latter city. This difference can be seen in two areas: (a) the presence, in New York, of the national headquarters of the major Negro-oriented organizations, and (b) the presence in New York of more liberal organizations which are "intermediate" between the white and Negro communities.

The two major Negro-oriented voluntary associations in the field of race relations (the NAACP and the Urban League) are headed by national boards of directors (or trustees) which draw heavily upon whites living in and around New York City. Of the 48 members of the NAACP national board of directors, 12 are white. Of these, 8 live in New York City and three others come from nearby eastern cities. (Of the 36 Negroes on the board, by contrast, only 6 come from New York City and 11 others from nearby eastern cities.) On the national board of trustees of the Urban League, 21 of the 25 whites live in New York City (but only 5 of the 14 Negroes). The national boards of other comparable organizations with Negro members similarly draw heavily on white liberals from New York. The NAACP and the Urban League include among their white members two Roosevelts, a Lehman, a Rockefeller, and other distinguished personalities. Most Negroes interviewed agreed that these names were a powerful lure and that membership on such boards was eagerly sought by many. The opportunity to associate with some of the best-known names in the country fascinates many, and the prestige which can be conferred on a militant and outspoken Negro leader who earns membership cannot be lightly dismissed, even by his Negro opponents. New York, uniquely the "headquarters city" of American civic life, acts as a magnet for local leaders in various cities who aspire to move up from local agencies to national board membership and as a source of status for aspiring leaders in New York itself. It "siphons off" local leaders from their local agencies. In recent years, the pressure on such groups as the NAACP to become more "representative" has in great part been a product of the desire of Negro leaders who lived far from New York to increase their representation on the national board.

In addition, the quality of Negro (or any minority-group) civic leadership may be sharply conditioned by the nature of the "intermediate organizations" which exist in a given city. They are intermediate in the sense of standing between purely Negro organizations (the NAACP, social clubs, business and professional associations) and mainly white organizations (business, professional, and civic groups). These intermediate groups have some stake in recruiting both Negroes and whites, either because of their goals (e.g., interracial or brotherhood organizations) or their constituencies (e.g., a political party or labor union). They are, in a sense, the transmission belt which links the white and Negro communities and which serve several important functions: they are a principal source of Negro-white contacts, they distribute rewards for civic activity and leadership, and they provide a training ground for the acquisition of leadership skills. The character of Negro civic life in any city will be in part the product of these intermediate organizations, and the latter will in turn vary from community to community.

The principal intermediate organizations are usually labor unions, political parties, and civic associations. Different kinds of such groupings provide different kinds of contacts, rewards, and skills. Negro-white contacts in New York, for example, differ markedly from those in Chicago. More Negroes, and more Negroes of higher stature in the Negro community, seem to be found in white voluntary associations in New York than in Chicago. There is, in the former city, a range of associations (both national and local) which provide opportunities for interracial contacts. Many of these are devoted to civil rights ends; some are not. In New York, many (if not most) of these groups are led and financed by Jews. They include committees for eliminating discrimination in housing, groups dedicated to challenging Tammany political power, and others. In Detroit, these intermediate groups come principally from labor (the UAW and other unions). The interracial contacts created by New York Jewish voluntary associations and Detroit labor unions cannot be matched in many other large cities. In Chicago and Los Angeles, there seem to be fewer such organizations and correspondingly fewer contacts.

But these intermediate groups are not limited to providing contacts. They also reward certain kinds of civic enterprise. A decided measure of liberalism and militancy on a whole range of issues is found in these groups, and those who wish to make a name for themselves can only do so by fulfilling certain expectations. These organizations, many of them national in scope and drawing on prestigious people in the white world, can confer considerable status on those active in them. To become eligible for these rewards, a Negro must display the proper qualities of intelligence, initiative, liberalism, and respectability. By attracting and rewarding would-be Negro civic leaders, then, these intermediate groups can impart a certain amount of vigor and restlessness to the Negro community itself. In Chicago, by contrast, the intermediate groups are of a different character. There are few such organizations that can or will reward militancy or liberalism but many (such as the entrenched political organization, conservative unions, and white business groups) which will reward moderation and conservatism.[1] The kinds of rewards available to Negro leaders in a city define what is considered appropriate civic activity; in Chicago, it is appropriate to be regarded as noncontroversial and safe. This is the path to success in politics, white business groups, and welfare associations.

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[1]On the different styles of politics created by the differing political systems of two cities (New York and Chicago), see my article, "Two Negro Politicians: An Interpretation," Midwest Journal of Political Science (forthcoming).

Finally, intermediate groups transmit a set of leadership skills to minority-group members. Negroes and others are "socialized" into the proper forms of civic activity. These skills include a familiarity with the conventional strategies of civic enterprise, the sources of funds and energy upon which organizations can draw, the points of access to public and private officials, the tactics of fund raising, the appropriate style of public utterances and press releases, etc. These are all part of the received wisdom of voluntary associations, but the particular contents may well vary from city to city. In some communities, for example, it is usual to attack the politicians openly; in others, criticism is muted. In some cities, leaders believe there is a "contact man" or "key figure" through whom interested groups must work to reach the Mayor; in others, no one believes that there is an easily-discernible point of access. How any civic leader behaves in a given case is, of course, the product of many factors--goals, organizational constraints, and institutional structure. I would suggest that some aspects of this behavior are not imposed, but learned. Negroes learn the structure and function of voluntary association work from the precedents of the intermediate organizations in which they have had experience.

Thus, the skills or rules of civic life which are imparted by precept and example are not simply techniques but also constraints. Negro ends may be in conflict with white ends in a certain area, but this conflict may be altered or reduced or exacerbated by the rules which govern middle-class civic life generally. For example, it is believed to be necessary to recruit the "right people" (i.e., prestigious men) who have a certain level of education or at least a certain style of life to the board of directors of any respectable association. A good public image and a reputation for respectability and reliability ought to be preserved. Dissension ought to be avoided. Favorable newspaper publicity is important. Often these considerations are demonstrably important to the attainment of some goal in civic life, but there are very likely many cases in which such considerations given action automatically because they represent "the way things ought to be done."[1]

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[1]On voluntary associations as both a training for leadership and a source of control over that leadership, see Alexis de Tocqueville, Democracy in America, trans. Phillips Bradley (New York: A. Knopf, 1951), esp. II, 118.

NEGRO LEADERS

The basic cleavage in the attitudes of Negro toward "Negro leadership" arises from differing, and to some extent conflicting, definitions of the nature of leadership itself. This is most often expressed in the statement that there is a difference between "Negro leaders" and "leaders of Negroes." The former are Negroes co-opted or recognized by whites as leaders and placed in positions or given offices as the representative of, or spokesman for the Negro community. The latter are Negroes who actually have a following among the Negro rank-and-file, whether or not they hold public positions. It has been a perennial theme of self-criticism among Negroes that most reputed leaders, including the officials of the NAACP and the Urban League as well as many others, are Negro leaders without a Negro following. Many feel strongly that these men or organizations should be replaced by leaders who do have that following.

If, by leaders, one refers to individuals who set goals for others (either by suggesting or blocking alternatives), then Negroes "recognized" by whites as "Negro leaders" can act in a leadership capacity even without a following. Whites may defer to strenuous Negro objections to some proposal even though such objections are raised by a Negro who lacks a personal following in the community. Indeed, this is a typical rather than an unusual case. To the extent that any Negro influences public policy, it is often a "Negro leader" rather than a "leader of Negroes."

The Negroes who have a personal following are, in most cases, either ministers, union leaders, or politicians. These men, if anybody, attract and hold the personal allegiance of men and women who are, theoretically at least, free to give or withhold that support and thus make or break the leader. It is significant that these men are rarely given prominent positions in the community as a whole. Few such leaders of Negroes are found on public commissions or agencies or on the boards of important, city-wide organizations and voluntary associations. In most large northern cities (and certainly in Chicago and New York), Negroes brought into such groups are more likely to be lawyers, businessmen, or doctors. Ministers are somewhat more in evidence than either politicians or labor union officials, but they are still found in far fewer numbers than their presumed influence within the Negro community itself would suggest.

The reasons for this are, of course, not hard to find. Influential whites who have themselves become civic leaders out of a background of success in business or law seek to co-opt Negro representatives (when they feel such co-optation is necessary) who are similar to them in background, training and experience. A Negro minister is often seen as a rather exotic figure from an unfamiliar background whose reactions

are uncertain; a labor union leader must bear the stigma of unionism (and thus possibly radicalism) as well as his badge of color. Further, organizations seek to co-opt leaders with special knowledge of, or at least reasonable familiarity with, the substantive issues at hand. Men with such knowledge are more likely to be lawyers, real estate brokers, insurance agents, or businessmen than ministers, politicians, or union leaders. Finally, Negro politicians are often excluded for the same reason other politicians are: in order to "keep politics out" of the issue.

As the Negro continues to enter into the institutional life of his city and as his own community becomes further diversified and organized, it will become increasingly unlikely that the Negro community will be represented by "leaders of Negroes." The processes of bureaucratization and organization now at work are essentially similar to those processes which affected other groups (Jews, the labor movement, business groups) many years ago. It will never be impossible for civic life to be powerfully affected by a "great leader" who suddenly arises (and particularly so as long as there continue to exist gross injustices of the kind which can be remedied by mass action under inspirational leadership), but it will become more and more improbable. Successes in civic activity heighten the level of expectations and hence stimulate more activity, but at the same time they reduce the opportunity for the leader of men and increase the scope of activity for the representative of men.

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ANTITRUST POLICY AND CONSTITUTIONAL THEORY

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8 - 10, 1960.

Perhaps the American antitrust story may best be characterized as an interweaving of two grand themes. The first of these is capsulized in George Stocking's paraphrase of Pope's poem:[1]

> Monopoly is a monster of such frightful mien
> That to be hated needs but to be seen.
> But seen too oft, familiar with her face,
> We first endure, then pity, then embrace.

This, then, is the empirical theme, and it consists of facts: the fact of giant firms, of the increasing prevalence of monopoly, oligopoly, and imperfect markets -- and all these despite hearty periodic rededication to the Sherman Act and its principles. For many thoughtful scholars, great corporate power is necessary, inevitable, ineradicable, and perhaps even desirable. A. A. Berle, one of the most persuasive spokesmen for this view, concludes that ". . .until a combination of technique and organization can be invented permitting individuals to do the job (of producing the complex consumer goods demanded by modern society), we are bound to make the best we can out of the situation. To my mind most of the results are rather surprisingly good."[2]

In a recent study prepared for the Joint Economic Committee, Theodore Kreps succinctly stated the second theme: "Historically antitrust policy, like a gnarled oak subjected to unsystematic pruning by weather, animals, and man, has grown irregularly, inconsistently, from various origins and in several directions."[3]

This illumines the theoretical theme. Its motif is confusion, uncertainty, and indecision; it embraces sharply contrasting views about "what is" and "what ought to be" within all disciplines claiming jurisdiction over the antitrust arena. Judicial vacillation between per se prohibitions and extensive market behavior analysis (in a word, between strict enforcement and the "rule of reason") confirms and reflects theoretical economic dispute about the nature and consequences of monopolistic competition. Both orientations, in turn, mirror pervasive theoretical arguments about the role and relative weight to be assigned such basic social values as freedom, equality, efficiency, and power distribution within an urban, industrial democracy.

Both the "fact" of corporate revolution and the theoretical response which knows not what to make of that fact have had an obvious impact on American constitutional development. So, too, have both obscured and made difficult attempts to measure the course of that development. The instruments of constitutional design -- legislators, administrators, and judges -- have found it imperative to recognize (at least sub silentio) the "fact", but in seeking for ways to legitimate and control it, they have been bounded and frustrated by the perplexities and uncertainties of current social

theory. If, then, proliferating organizational power may properly be viewed as the dominant economic fact of our time, and if the economic arrangements of society can be said to be the paramount concern of an industrialized nation, then failure to develop a reasonably coherent theory of public affairs both to describe and to prescribe for that fact points to a constitutional crisis of considerable magnitude. Herein lies both the piquancy and the gravity of current efforts to assess the impact of the antitrust idea on patterns of constitutional growth.

It will be the central thesis of this paper that interpretation and application of antitrust policy have affirmed the legitimacy of largescale corporate organization, the "fact" of bigness, and consequently have rejected as hopelessly outmoded the classical notion of free, competitive markets; that this, in turn, has required and has produced a recasting of the constitutional ideas of individual liberty and of the proper relationship between economic man and the State; and, finally, that only recently have the Courts begun positively to shape a constitutional position from which to challenge the consequences of monopoly. The root of this emerging position appears to be a growing concern for equality rather than for liberty, and its ultimate implication may well be a "constitutionalization" of the major centers of economic power.

A subsidiary theme interpenetrating and connecting all of these propositions is the largely unexplored relationship between antitrust policy and general social theory.[4] When reliance upon the idea of utility gives way to faith in a scientific concept of organization, the constitutional response which we make to the facts of economic life must inevitably be affected.

Each of these propositions and the doctrinal thread which relates them deserves greater elaboration than can be attempted in a brief paper. But perhaps the rough sketch and the broader canvas will reveal with greater clarity some of the causes of conceptual confusion in the antitrust area.

I.

What have been the patterns of antitrust action in the postwar period? From out of the welter of learned comment, politically motivated manifestos, ambiguities of official doctrine, can a general thrust and dominant demand of policy be identified? Has there been, as alleged, a confirmation of bigness and a more permissive attitude toward heretofore suspect practices?

Answers to these and related queries seem to depend upon the authority one chooses to read. George Stocking concludes "that cultural environment -- the economic and social milieu -- determine the attitudes of the Courts in antitrust decisions; and that economists who, like judges, have responded to the same influences, have afforded in the concept of workable competition a logical basis for a lax administration of the Sherman Act."[5] More vehemently, Adams and Gray see ". . . a gradual but unmistakable retreat from the traditional antimonopoly policy which for over three hundred years has prevailed in the Anglo-Saxon community toward an ambiguous and somewhat apologetic acceptance of monopoly as a necessary, even desirable, form of economic organization."[6]

On the other hand, Robert Solo in a recent article for The Antitrust Bulletin asserts that "After acting for nearly a century as the prime guardian of status and barrier to social intervention, since the early 1940s the Court has become . . . the harbinger of basic reform."[7] This is so because the Court regards government as "no longer merely defensive and protective. It is positive and creative." Hence, the "new role of the Court" provides a "positive and creative government . . . the freedom to choose and plan."[8] Finally, Fainsod, Gordon and Palamountain, in their admirable text underscore what appears to be a general belief in the "new" Sherman Act. "Beginning in the late 1930s," they assert, "antitrust activity was revived as the cardinal feature of American public policy toward the bulk of industry. Except for the war years, this revival has continued down to the present day. It has been marked by broader judicial interpretation of the Sherman Act, more ample Congressional support, and more vigorous executive enforcement. . ."[9]

What evidence is offered in support of each of these polar interpretations, one of which we might label as affirmative, the other critical? Those who find new vitality and doctrinal strength in postwar antitrust policy point mainly to the work of the Courts. Negatively, judicial restraint is said to have softened or eliminated many of the Constitutional limitations previously functioning as barriers to economic regulation. Thus, a more liberal interpretation of the commerce and welfare clauses facilitates expanded and more effective Federal control, while judicial restrictions on the scope of substantive due process liberate both state and national governments from the narrow gospel of private property. Positively, a number of landmark decisions construing the major antitrust statutes during the past two decades are hailed as salutary and strengthening innovations. The Alcoa ruling,[10] for example, is seen as a partial abandonment, or at least a significant modification, of the "rule of reason," as a rejection of the U. S. Steel[11] doctrine that unexercised monopoly power is no offense, and as a denial of the defenses of "innocent intent" and "efficient performance." The Cement,[12] Paramount,[13] and American Tobacco[14] decisions have supposedly mitigated the evidentiary problems of enforcement agencies by affirming the concept of "conscious parallel action," while the four major divorcement orders of the postwar period (Pullman, Paramount, United Fruit and Yellow Cab)[15] are said to indicate a revival of divestiture as the ultimate enforcement weapon. A significant expansion in the Sherman Act's coverage is believed to result from its recent applications to boxing,[16] the legitimate theatre,[17] newspaper publishing,[18] and building construction.[19] The intra-enterprise conspiracy decisions (Timkin Roller Bearing, Keifer-Stewart, and Yellow Cab)[20], by holding that illegal conspiracy may exist within the confines of a single firm, are regarded as a firm reassertion that the artificiality of corporate structure must give way to the demands of competition. In a number of recent decisions the ancillary benefits of patent monopolies (such as cross-licensing), originally exempted from Sherman Act prosecution in the General Electric case,[21] have been severely curbed. Hence, Line Material, Gypsum, New Wrinkle, and National Lead[22] are believed to have narrowed a significant constitutional salient in the antitrust perimeter. Finally, there is alleged to have been an effective extension of the per se doctrine in unfair practices cases arising under both the Clayton and Sherman Acts: boycotts[23] and collusive price-fixing [24] have been reaffirmed as per se violations; tying contracts, likewise, are now held to be per se offenses where the seller enjoys a monopolistic position in the market for the "tying" product;[25] exclusive dealerships may now be prohibited when they effect a "substantial" portion of a particular line of commerce even though competition may not actually be diminished as a result of their use, and hence "quantitative substantiality" is said to place exclusive dealerships within the per se category;[26] facts proving the existence of price discrimi-

nation are now alleged to create a prima facie violation of Sec.2(a) of the Clayton Act,[27] while the "meeting competition" and "legitimate cost difference" defenses are thought to have been largely eroded away;[28] and, of signal importance is believed to be a stiffening judicial resistence to mergers, both past and prospective, as indicated by the DuPont - G. M.[29] and the Youngstown-Bethlehem[30] decisions.

The affirmative point of view thus derives from 25 or 30 key decisions which have come down since 1940 and which are interpreted as broadening and toughening anti-monopoly policy. Critics of antitrust performance, while they would place a considerably less optimistic construction on these judicial results, direct their most effective fire at the other two branches of government. Their arguments are persuasive, if not compelling.

If it is true, as one commentator has recently remarked, that economic regulation is "social engineering, far removed from the settlement of disputes in equity or the minimization of crime,"[31] then it is in legislation and administration that we must seek the constitutional configuration of antitrust policy.

Congress has been characterized as a "promoter of monopoly" and as the creator of "unwise, discriminatory, privilege-creating. . . measures which throttle competition and restrict opportunity."[32] Verification of this sweeping judgment may be sought in four different areas of legislative performance.

First, as Donald Dewey remarks, "The total amount of money spent to enforce the antitrust laws over sixty-five years would not buy a medium-size naval vessel. . ."[33] Nor have appropriations increased significantly in the postwar decades. The annual expenditures of the Antitrust Division decreased from approximately 3-2/3 million in 1951 to a low of 3 million in 1955, and then rose to an estimated 3-3/4 million for the current fiscal year.[34] Hence, anticipated expenditures this year will be about 5% above those of a decade ago. These inadequate appropriations produced a 27% decrease in the Division's staff between 1951 and 1955 and there has been only slight improvement in the last five years.[35] According to the Head of the Antitrust Division, the number of attorneys available per action instituted declined from 6.57 in 1952 to 4.02 in 1957, while appropriation dollars per action similarly decreased from $114,000 in 1952 to $65,000 in 1957.[36] It is true, of course, that the Division's annual appropriations during the 1950s averaged roughly 10 times those of the 1930s. However, the average Federal budget increased over 7 times in the same period, while the average annual G.N.P. increased nearly 5 times.[37] If account is taken of an over 50% decline in the value of the dollar, and if financing efforts are evaluated in relation to the total cost of government and to the magnitude of enforcement problems in an expanding economy, then far from increasing, as is so often claimed, antitrust appropriations have, in effect, diminished.

The erosion of antitrust coverage by statutory exemptions constitutes a second measure of legislative performance. At present there are 22 such statutes; 21 additional acts vest the enforcement of antitrust policy rather ineffectually in various regulatory commissions.[38] Hence, it is estimated that over 70% of all goods and services purchased by consumers are exempt from antitrust prohibitions.[39] Not only have recent Congresses failed to reduce significantly the wide scope of this immunity, but by the McGuire Act they have reinforced resale price maintenance,[40] by the McCarran Act agreements among insurance companies have been exempted to the extent that otherwise

satisfactory regulation is provided by state law,[41] and under the provisions of the Reed-Bulwinkle Act rate-fixing agreements among railroads and motor carriers which receive the approval of the Interstate Commerce Commission have been legitimatized.[42] Thus, contemporary legislation has widened and fortified the critical gaps in our anti-monopoly defenses.

Congressional failure to respond to insistent demands for legislative strengthening of both the substantive and enforcement features of the antitrust laws provide a third yardstick for evaluation. Measured against such admittedly invigorating innovations as the Antimerger Act of 1950, the increase in maximum criminal fines from $10,000 to $50,000, and the provision that cease-and-desist orders of the Federal Trade Commission be made final when issued, must be a refusal to consider seriously such proposals as the following: that civil and criminal penalties be reinforced, or even replaced, by the much more effective weapon of charter revocation under a uniform Federal incorporation law; that fragmented enforcement authority now scattered among a number of commissions and agencies be centralized in the F.T.C. and the Antitrust Division; that large firms be statutorily prohibited from occupying more than a given percentage of any particular market; that Congress reverse by legislation the Standard of Indiana rule[43] which makes the "good faith meeting of competition" proviso an absolute defense to charges of price discrimination under Sec.2 of the Clayton Act; that a system of treaties be negotiated to protect the American economy against the adverse effects of restrictive international cartels; that Sec. 4 of the Clayton Act be broadened to allow the government as well as private parties to collect damages resulting from violations of the antitrust laws; that Sec. 4 further be amended to authorize private treble-damage actions specifically against producers who refuse to deal with retailers who, in turn, do not wish to enter into exclusive dealing arrangements; that all re-sale price maintenance laws be repealed.

It is beside the point that these and other proposals might prove, upon mature reflection, to be unwarranted. Failure to consider them seriously refutes to some extent the claim of increasing "legislative support" for the antitrust idea.

The final test of Congressional performance is to be found in the antitrust implications of certain Federal regulatory and promotional programs. Specifically, it is alleged that the independent regulatory commissions, particularly the F.C.C., the C.A.B., and F.P.C., have positively encouraged high concentrations of ownership within the industries for which they are responsible,[44] that defense procurement policies have unduly rewarded the existing industrial giants or have contributed to the development of new ones, and that the statutory basis for the commercial exploitation of atomic energy discourages competition and may well promote monopoly in a potentially crucial industry.[45] The substance of these charges cannot be explored here. Essentially, they rest upon evidence purporting to show a significant decrease in the number of licensees or contractors, an inordinate increase in the profits of regulated firms and defense suppliers, and a proliferation of artificially created barriers to entry, with a consequent restriction of competition far below its technically potential level. Again, while the accuracy of these assertions is subject to debate, available evidence casts considerable doubt on the firmness and direction of legislative contributions to antitrust policy.

As the legislative record of the past two decades reveals no excessive devotion to the antitrust ideal, so administrative performance has been equally lacking in steady purpose and similarly marked by ambiguity. Manifestly, a thorough survey of recent executive experience[46] cannot be attempted here. It should be enough to remark that

administrative agencies are buffeted by Presidential policy, conflicting interest group demands, vacillating judicial doctrine, and the often inconsistent views of scholarly commentators. It is not surprising that attempts to accommodate these heterogeneous influences have produced a pragmatic and frequently opportunistic course of conduct. Thus, in cases instituted under Sec. 2 of the Sherman Act, the Antitrust Division has tended to press for wider acceptance of what it conceives to be the Alcoa[47] rule that size alone is sufficient to convict.[48] In Sec. 1 proceedings, on the other hand, the Division has been inclined to abandon the doctrine of conscious parallel action and to emphasize economic tests of industry performance. Finally, there is little evidence of an intention to exploit vigorously in the anti-merger field the opportunities provided by the DuPont-G. M. decision. On the whole, the performance of both the Division and the Federal Trade Commission reflects an erratic quality which can probably be understood only against the broader background of recent policy developments in other, but related areas.

II.

How, then, may we summarize the constitutional impact of legislative policy and administrative performance during the past two decades of antitrust experience? First, there is little evidence that either branch of government has sought singlemindedly to realize the classical promise of an atomistic market and an individualized ethic by maximizing price competition, effectively dispersing the existing centers of economic power, or facilitating entry of new firms into artificially blocked market areas. If the optimistic commentators assume a model of perfect or near-perfect competition as a standard of judgment, then the modern record does not bear out their sanguine impressions of revitalized and improved performance. Second, it would appear that those critics who focus on Congressional inaction, Executive passivity or ambituigy, and political conformity to a theory of imperfect competition are closer than are their optimistic colleagues to an accurate assessment of recent antitrust experience. Third, the underlying constitutional significance of neither legislative nor administrative contributions to antitrust policy are easily identified or assessed. If the core of a constitutional system is viewed in McIlwain's terms, as the balancing of jurisdictis and gubernaculum[49] -- of law and will -- then constitutional theory is properly to be viewed as a coherent explanation and justification for the balance which is, at some given moment, achieved. Hence, an explication of the constitutional impact of any concrete program such as antitrust involves at least an attempt to identify and to justify the currently accepted goals of both law and will, and to trace the causal relationship between those goals and the action program under investigation. We will, however, search in vain for the articulation of such an authoritative theory by either Congress or the Executive. Nor is this surprising, in view of the excessively pragmatic and non-doctrinaire character of the American governmental tradition. Certain tentative, often conflicting, and vaguely formulated objectives, however, can be inferred from recent legislative and executive activity; these, in turn, imply a certain view of interpersonal and intergroup relations, as well as a general formulation of the freedom-authority equation.

As protection of the individual against coercive state power, and, later, rescue of the underprivileged from poverty and want were the dominant social demands of earlier epochs, so preservation of the community from the external threats of a foreign power and an alien ideology have become the central preoccupations of our own time. The public will has shifted from a focus on individual freedom to an excessive concern with national security. Legislative and Executive contributions to the legal implementation of and control over this will have therefore stressed certain intermediate goals best calculated to effectuate the overriding security objective. In the antitrust area emphasis has been placed on efficiency; efficiency in production, in meeting the demands of consumers, in technological innovation, and in defense production.[50] Legislative and

Executive action -- as distinguished from explanation and justification -- appears to be premised on the assumption that efficiency in these matters is a function of size, organization, and experience. Defense Department pressure on the Attorney General to drop his demand for a divorce of Western Electric from the American Telephone and Telegraph Company on grounds of national defense requirements is but one instance of this assumption at work.[51] Although the impact of giant firms and their strategic defense role on other values -- such as economic growth, full employment, stable prices, and small business opportunities -- have not gone unnoticed;[52] an unwillingness to endanger the dominant security goal by positive implementation of these other values has created, by inaction if nothing else, a certain immunity for large concentrations of economic power. Hence, the older constitutional concern with dispersing centers of power and with maximizing the economic freedom of small producers and consumers has been thrust into the background.

Although Congress and the Executive have been unable to provide any overt, systematic explanation for the balance which has been struck between popular demands for security and the constitutional requirements of liberty, they have adopted, at least in part, a conveniently available theory from the economists: the theory of imperfect competition. It is this idea, which we earlier characterized as a doctrinal thread connecting and relating the major antitrust concepts of the postwar period[53] that furnishes intellectual support for the majority report of the Attorney General's Committee to Study the Antitrust Laws, the 1952 Report of the Business Advisory Committee of the Commerce Department, and many of the F.T.C.'s recent decisions. It is a theory, moreover, whose implications are not only consistent with but strongly reinforcing of National Security requirements for efficiency and large firms.

Stripped to its essentials, this concept holds that contemporary technical and institutional conditions are incompatible with pure competition and atomistic markets, that competition is workable, although imperfect, if there is an absence of collusion within the industry, relative freedom of entry, and evidence of exemplary behavior such as constant product improvement, downward movement of prices reflecting constantly decreasing costs, and concentration of production in units of optimum size.[54] Hence, oligopoly markets, price leadership, selective price cutting, mergers, and quality differentiation rather than price competition are permissible so long as the industry in question meets certain standards of economic performance. The doctrinal upshot of this position is the preservation of competition -- albeit imperfect -- rather than the protection of individual competitors. Hence, while the need for a certain degree of power fragmentation is admitted, the resulting centers of economic influence turn out to be groups rather than individuals -- either large, vertically-integrated producers, loosely-knit horizontal combinations under the influence of a price-leader, or integrated suppliers functioning as monopsonists. Unfortunately, the proper relationship to be struck among these groups, within them, and between them and the state, has not been comprehensively formulated within the framework of current economic theory. When viewed exclusively from the perspective of economic man, the theory does posit a producer-consumer relationship supposedly guaranteeing maximum output, minimum price, and constant product improvement, as well as an inter-producer relationship allegedly providing the most efficient, long-run allocation of resources. But what is to guarantee the preconditions necessary for the successful development of these relationships? How, in short, is conspiracy to be precluded, entry of new competitors made reasonably possible, and a minimum degree of competition preserved? It would appear that the unarticulated major premise upon which these economic relationships are grounded is an assumption of automaticity suspiciously similar to the classical concept of a mechanically self-adjusting price market. So Galbraith sees effective control of monopoly in the development of certain centers of countervailing power, Schumpeter in a process of "creative destruction" of firms

and industries, Berle in the spontaneous self-restraint of business leaders.[55] Common to these otherwise differentiated views is a belief that the factors which limit power are automatically generated by the conditions which produce power. This being so, the state, in its role as umpire, need not be overly concerned with positive efforts to shape inter-group and inter-personal relationships.

In brief, theories of imperfect competition imply a theory of the state not essentially different from that implicit in 19th century liberalism. Replace the individual entrepreneur with the giant firm, augment the hedonistic calculus with faith in efficiency, and assume an "invisible hand" whose fingers point to social duty as well as to self-interest, and the parallel becomes striking. Schumpeter tells us that "most of the creations of the intellect or fancy pass away for good after a time that varies between an after-dinner hour and a generation. Some, however, do not. . . These we may call the great ones. . ."[56] So it is with the seductively simple notion that "that government is best which governs least" -- least being a quantum that is relative to time and condition. Greatness, of course, may reside in persistence rather than in truth, as it did for Schumpeter in his original application of this idea to Marxism.

All of this is not to assert that the political implications of current economic doctrine have been systematically analyzed, or that their epistemological, psychological, and ethical roots have been exhumed and examined. On the contrary, the constitutional significance of current economic speculation seems to have gone largely unrecognized except by those few theorists who remain focused on the concepts and language of economic science. We point here merely to a tendency, the consequences of which require more serious exploration than they have yet received.

Thus far, little has been said about judicial contributions to antitrust policy. It has been observed that the optimistic commentators find a salutary and invigorating influence in the postwar decisions, while the critics see only continuing confusion, indecision, or virtual surrender to monopoly. But what are the standards of evaluation for each of these groups? Such critics as George Stocking, Corwin Edwards, Dirlam and Kahn, and Adams and Gray[57] are suspicious of the newer models of imperfect competition and lean toward some practically attainable version of the atomized market as an ideal situation, while the optimists are either inclined to embrace the newer economic formulae or to avoid the thorny task of specifying evaluative models. But both schools, whether approving or disapproving, tend to analyze recent judicial doctrine in terms of economic categories and concepts generally, and within a framework of imperfect competition specifically. This approach suggests a number of critical questions: Have theories of imperfect competition so influenced the Courts themselves as to predominantly shape the course of antitrust law? If so, what has been the effect on constitutional development and how shall we evaluate that effect? If not, is it either wise or fruitful to persist in the effort to fit judicial propositions into the narrower categories of economic theory? Finally, if we abandon the present interpretive trend, what alternative analytical framework is available? It is with these queries in mind that we turn to a closer inspection of the recent antitrust decisions.

If, in the language of Chief Justice Hughes, "The Sherman Act is of the same order of generality as a constitutional provision,"[58] then we might expect judicial construction of antitrust policy to reflect a dominant preoccupation with those concerns which have traditionally defined the core of our constitutional system -- diffusion of power, legitimate and responsible exercise of authority, and preservation of the dignity, liberty, and equality of the individual. These concerns, it is submitted, are considerably broader, involve a more elaborate range of considerations, than do the more limited

economic objectives of efficiency in production, organization, and distribution. Although it has become fashionable to analyze the Court's antitrust work primarily within the narrower economic framework, and although many judicial decisions have been, in part, cast in the language of current economic speculation, nevertheless it would be a mistake to impute to the judiciary an exclusive or even predominant concern with implementing contemporary theories of imperfect competition. J. M. Clark, Joan Robinson, and others, may have been read into the Sherman Act, but their constructs have been viewed more as means than as ends. To what extent has a judicial consideration of means permeated and colored the postulation of ends to be achieved by antitrust policy?

The core of most Sherman Act decisions has been the familiar "Rule of Reason." As originally formulated in the Standard Oil case,[59] this concept was not intended as a device for distinguishing "good" trusts from "bad" ones, but rather as a measure of the anti-competitive effects of certain market structures and conduct. Price-fixing, destruction of competitors, and exclusion of new entrants were considered violations whether or not the firms involved were well-managed, progressive, and benevolent. Hence, Justice McKenna could announce in his U. S. Steel opinion that the law does not make mere size or unexerted power an offense. "It, we repeat, requires overt acts and trusts to its prohibition of them and its power to repress or punish them."[60]

But if the "Rule of Reason" was not originally intended as an umbrella over imperfect markets, it was nevertheless susceptible of such an interpretation. Does a particular market structure or a certain course of conduct result in less price competition, greater destruction of competitors, or exclusion of more potential entrants than would some alternative situation? If the "Rule of Reason" is viewed in this light -- if, in short, it rests upon the assumption that certain anti-competitive effects are implicit in all successful competition -- then elaborate economic analysis involving price policy, production quality, conduct of firms, boundaries of the market, number of firms in the industry, etc., become the necessary prerequisites to judgment. In this sense, the Rule of Reason becomes a pseudonym for "workable competition."

In Sec. 2 cases, however, there is little indication that the Rule has received this interpretation. The Alcoa,[61] Pullman,[62] United Shoe,[63] and Kansas City Star[64] decisions evince a judicial tendency to discover in market dominance coupled with exclusionary practices, the power to fix price and to block potential entrants. Alcoa's control of 90% of the nation's aluminum ingot production, observed Judge Hand, "necessarily had a direct effect on the ingot market."[65] Hence, he concluded, the company "was free to raise its prices as it chose, since it was free from domestic competition."[66] Only so long as the monopoly remains inert is it valid to argue that the mere existence of power does not constitute an exercise of power. "As soon as the monopoly began to operate -- that is, as soon as it began to sell at all -- it must sell at some price and the only price at which it could sell is a price which it itself fixed."[67] In none of these cases was it considered necessary to weigh industry performance, to speculate on the comparative advantages of giant firms, or to evaluate price trends, quality improvement, and technological innovation.

If the Rule of Reason has been the dominant rationale in Sec. 2 cases, then the doctrine of Conscious Parallel Action has a similar function in Section 1 decisions. It would seem equally clear that this doctrine does not translate the Rule of Reason into an apology for imperfect competition. Indeed, the second American Tobacco decision merges and equates conscious parallelism with the Rule of Reason as construed by Hand in Alcoa, resting both on what is essentially an assumption that certain market structures, coupled with a particular pattern of behavior, produce a prohibited result. That

result "is not that prices are raised and that competition actually is excluded, but that power exists to raise prices or to exclude competition when it is desired to do so."[68] Hence, conscious parallelism comes rather close to those per se rules so vigorously attacked by a majority of the Attorney General's Committee as inconsistent with theories of workable competition.[69]

Other Sec. 1 decisions offer additional evidence of a judicial trend toward the per se concept and away from complex economic reasoning. Thus, in the twelve criminal proceedings initiated against trade associations during the first quarter of 1959 the courts affirmed the Government's contention that price cutting, exclusion or boycott of competing firms, associations embracing competitors at different levels of an industry, and overly methodical policing of members to guarantee adherence to the association policies are all per se offenses under Sec. 1 and that trade association membership is a per se offense whenever unlawful behavior can be imputed to the parent organization.[70] Further, price-fixing[71] and the imposition by manufacturers of some territorial and customer restrictions on distributors[72] continue to be regarded as per se violations under Sec. 1.

What, then, are the broader implications of recent Sherman Act rulings? First, care must be taken to avoid the error earlier imputed to the optimistic commentators that these decisions represent a toughening of antitrust policy within the traditional meaning of that concept. They are not oriented primarily toward limiting the size of individual firms nor at prohibiting large concentrations of economic power. Nor do they seek to disintegrate existing centers of power through the traditional remedies of dissolution, divorce, and divestiture. On the contrary, government attempts at trust-busting were rebuffed in the great majority of these instances. Second, the essential test of legitimacy implied by these decisions appears to be a simplified market-structure analysis;[73] beyond a certain point in size and below a certain number of firms, illegal conduct (such as price-fixing and exclusion of competitors) can be assumed. The empirical, economic evidence of industry behavior need not be tortuously examined. Third, a simplified market structure analysis, at least when employed in the manner referred to here, would appear to depart rather widely from current notions of imperfect and monopolistic competition. It is true, of course, that monopoly in the legal sense has usually been thought to mean abusive or restrictive practices while monopoly in the economic sense has been equated with control of the market. It is also true that market structure is recognized as one significant aspect of market control. But it must be emphasized that recent judicial doctrine employs market structure tests first as a means to the more basic end of ascertaining the existence of illegal practices and second as a device for identifying power situations which may be objectionable on other than economic grounds; market control in an economic sense is not necessarily an offense. As indicated earlier, there are more fundamental and traditionally constitutional objections to the forbidden practices and to the prohibited power situations than mere economic dominance over a specified market area; these objections we shall inspect more closely in the conclusion. Finally, there is a notable absence of complex economic analysis in recent Sherman Act cases. Many economists, particularly those who emphasize performance rather than market structure tests, view this as proof that the Courts are employing economic reasoning in an inadequate manner. Such an indictment is largely irrelevant, however, if, as we indicate here, the judiciary has not accepted a model of imperfect competition as its dominant organizing concept.

What the Rule of Reason and Conscious Parallelism have been to the Sherman Act, the doctrine of Quantitative Substantiality has been to the Clayton Act. This concept occupies the central interpretive role in the so-called vertical integration cases,[74] of which Standard Stations[75] and DuPont-G.M.[76] are perhaps the most representative. Here,

again, is a formula which does not fit easily into the theory of imperfect competition. Standard Stations raised the question of whether exclusive dealing contracts imposed by The Standard Oil Company of California on its retail outlets "substantially lessened competition" in the petroleum industry in violation of Sec. 3 of the Clayton Act. The majority concluded that such contracts were an offense because, to borrow a phrase from Kessler and Stern's excellent analysis, "When competitors are foreclosed from a substantial enough share of the market, it is not farfetched to infer a substantial lessening of competition."[77] Does this imply that exclusive dealing contracts are a per se offense and that all are prohibited regardless of circumstances? Not quite, since the question of what is "a substantial enough share of the market" must still be answered. It would seem clear that the Court was not influenced by Standard's 6.7% share of the Western retail market, but rather by the 65% share controlled by the seven major distributors, each of whom employed exclusive dealing contracts similar to those used by Standard.[78] Once again, the underlying rationale of the decision appears to be a market structure or market power analysis. Quantitative Substantiality is thus given much the same interpretation as were the Rule of Reason and the Concept of Conscious Parallel Action in recent Sherman Act decisions. Further, the majority in Standard Stations specifically rejects Mr. J. Jackson's argument that the economic consequences of voiding these contracts in what is essentially an imperfect market will reduce rather than increase the volume of competition. The Court, then, seems to be taking something of a middle course between the per se idea and the theory of imperfect competition.

The facts of the DuPont-G.M. decision, which also constituted a case of vertical integration, scarcely needs repeating here. Essentially, the government charged that DuPont's acquisition of 23% of G.M.'s stock would "tend to create a monopoly" in violation of Sec. 7 of the Clayton Act. The Court, however, construed "tend to create a monopoly" as identical to the phrase "substantially lessen competition," citing Standard Stations for the meaning of the latter, and, consequently, of both concepts.[79] Mr. Justice Brennan thereupon found that since G. M. controlled over half the automobile market, and, since, further, DuPont supplied "the largest part" of G.M.'s needs for fabrics and finishes, that "there was a likelihood that competition may be 'foreclosed in a substantial share'" of the market; thus, DuPont's interest in G. M. "tends to create a monopoly." Although the relevant market was defined here as automotive finishes and fabrics, most critics are quick to point out that such a market constitutes only a small portion of the total paint and fabric market. Therefore, the likelihood for DuPont's control to "Substantially" reduce the competitive opportunities of other paint and fabric suppliers is even less than the anti-competitive potential implicit in the Standard Stations situation. One can only conclude that the simplified market-structure test of the Standard case, and all that it implies, has been affirmed and extended by DuPont-G.M.

While it is still too early to determine whether the Court will continue to employ an essentially non-economic orientation in cases arising under amended Sec. 7, The Anti-Merger Act of 1950, the Youngstown-Bethlehem[80] and the Maryland-Virginia Milk Producers[81] decisions afford some indication that they will do so. The Federal Trade Commission, however, in its Brillo,[82] Crown-Zellerbach[83] and Scott Paper[84] rulings appears content to follow the well-known Pillsbury[85] precedent, requiring a thorough market analysis of all relevant economic facts in determining the probability of adverse competitive effects in Sec. 7 cases.

A final observation on the doctrinal thrust of recent antitrust decisions concerns George Stocking's allegation that three of the leading divorcement actions of the postwar period -- Alcoa, United Shoe, and National Lead[86] -- reflect an almost total judicial preoccupation with theories of imperfect competition.[87] In all three cases the

Courts found that violations of the Sherman Act had occurred, but in none was divorcement relief granted. Stocking remarks that in refusing to grant the requested relief, the Courts "attached greater weight to the industry's performance than to its structure,"[88] thus grounding the analysis in each case on "a broad conception of the principle of workable competition."[89] It is true that all of these opinions show a careful examination of the usual factors bearing on industry performance -- number and strength of firms, extent of technological development, availability of close substitutes, etc. -- but whether they reveal enthusiastic judicial adoption of theories of imperfect competition is doubtful. It must be recalled, first, that Courts are essentially negative rather than positive formulators of regulatory policy. They are equipped with neither the knowledge nor the organization to undertake the planning and restructuring of markets or the detailed direction of economic life. The tortuous course of the public utility rate cases up to Hope Natural Gas and subsequent abandonment of judicial efforts to create criteria for measurement of the rate-base provide rather convincing evidence for this assertion. Second, what Donald Dewey calls the innate conservatism of the Courts[90] -- their unwillingness to disturb the existing property and contractual relationships among stockholders and employees of the affected firms -- must be considered a cardinal factor in the fate of all divorcement actions. It is one thing to assume that further concentrations of power will produce inequitable results and to block it; it is quite another to anticipate the distributive consequences of a positive reorganization of economic relations and to adopt an economic model that will guarantee those consequences. While the first may require some degree of sophisticated conjecture, the second demands either omniscience or else an abiding faith in the economic theory on which it rests. Hence, far from affirming a theory of imperfect competition, these decisions would appear to cast some doubt on its viability.

III.

In conclusion, then, Rule of Reason, Conscious Parallelism, Quantitative Substantiality, etc., the dominant interpretive doctrines by means of which the Courts have fashioned current antitrust policy, veer away from rather than toward the idea of imperfect, or even workable, competition. None requires or has been given the type of complex economic analysis, particularly in terms of industry performance, that implementation of this idea would seem to require. But, if the Courts have not read imperfect competition into the Constitution as a fundamental organizing concept, what has been the broader constitional significance of their work? Just as the idea of substantive due process with its inordinate emphasis on individual rights to property and to contract was the central constitutional theme of an earlier day, so the idea of equality under law -- the right to equal protection of the laws -- might be viewed as the key to modern day constitutional development. An accelerating penetration of economic life by organs of the State inevitably has shifted the constitutional focus from what have been called the negative freedoms to what may be labeled the positive freedoms: emphasis is no longer placed upon freedom from State interference (which has often meant freedom to disadvantage others), but rather upon freedom for the full enjoyment of such privileges as earning a livelihood, achieving a decent standard of living, raising a family, and other basic social objectives of a democratic society. Freedom in this latter sense has been thought to require not only protection of the individual from the arbitrary demands of public power, but also, and equally, from unwarranted interference by the holders of private power. It is this aspect of the libertarian idea that shares much in common with equalitarianism. Both are oriented toward positive promotion of those conditions necessary for the full and equal enjoyment of the fruits of social organization. Both are concerned with elimination of the roadblocks to individual self-fulfillment so frequently resulting from the clash of private interest groups.

If the concept of equality has not been the articulated foundation of recent antitrust decisions, nevertheless judicial construction has been thoroughly consistent with its implications and its broader meaning. If one gropes for the grand organizing theme, he is more likely to find it in the notion of equality under law than within the narrow confines of economic theory.

The heart of the constitutional idea of equality, whether derived from the Equal Protection Clause itself, the Fifth Amendment, the Commerce Clause, or the First Amendment,[91] has been the concept of reasonable classification -- the demand that when privileges are granted to, or restrictions are imposed upon, groups of individuals, that all who are similarly situated be similarly treated, and that the purpose of the classification be legitimate.[92] Under conditions of modern economic life, privileges and restrictions flow from the decisions of both public and private centers of power: General Motors no less than the State of Michigan conditions and defines the scope of what we have called the positive freedoms. This being so, ultimate constitutional authority is as much concerned with the reasonableness of those classifications resulting from private decision-making as it is with the classificatory consequences of public action. So, price discrimination may arbitrarily advantage some purchasers at the expense of others; conspiracy to monopolize or to restrain trade can unreasonably restrict potential competitors to the profit of existing ones, or unfairly discriminate against that class of consumers which views the product in question as a necessity; full-blown monopoly may exacerbate all of these discriminatory consequences.

The simplified market-structure analysis which seems to underpin most of the leading antitrust doctrines may be viewed, at bottom, as a demand for reasonable classification in private economic decision-making. Organizations, of course, cannot discriminate until they act, and it is the practice not the structure which ultimately must be judged on equalitarian grounds. But since the judiciary is no better equipped to police the details of all business conduct than it is to supervise the behavior of every public agency, it must make assumptions about the potentially discriminatory effects of large configurations of economic power. Firms in an oligopolistic industry <u>may</u> not discriminate against competitors, potential entrants, or consumers, but then neither may juries from which negroes have been systematically excluded <u>necessarily</u> discriminate against colored litigants whose cases are before them. Monopolies <u>may</u> not arbitrarily exploit buyers, but then neither may licensing boards which operate without the guidance of specific statutory standards. In any case, it is the likelihood of discrimination that will, under the equal protection concept, determine the ultimate judicial outcome.

If recent antitrust decisions can legitimately be evaluated in equal protection terms, rather than within the narrower confines of economic theory, then the traditional dichotomy between <u>per se</u> rules and complex economic analysis becomes somewhat irrelevant. The requirement for reasonable classification and equal treatment is not intended to guarantee the survival of every would-be competitor, regardless of experience, ability, or resources, nor can it provide impartial protection to each individual consumer. It seeks to rationalize relationships among and within large groups, rather than to guarantee personal rights and privileges; it is directed primarily to a reasonable use of power under existent conditions and specified policy aims, rather than to an authoritarian formulation of those conditions and aims. Hence, it can and must accept the reality of large-scale enterprise, seeking only to restrain and to control its consequences. On the other hand, the equalitarian idea encompasses values other than, and in addition to, that of economic efficiency. It cannot afford to become captive of an analysis which is aimed exclusively at such a limited objective.

It is in this sense that the constitutional idea of equality provides a middle route between the per se extremes of individualism and the collectivist implications of theories of imperfect competition. At the same time, it offers an effective possibility for translating economic formulae into the superior requirements of constitutional doctrine. Finally, it facilitates an accommodation between popular demands for national security and the traditional desire for constitutional limitations on the exercise of power -- be that power public or private. We might well conclude, then, with Eugene Rostow's observation that "Economic activity, after all, is a means as well as an end in the hierarchy of Democratic ambitions. An economy should be judged by what it adds to the wealth of a nation. . . Beyond that goal, judgment should measure its effect on men, on politics, and on the values and culture of the society."[92]

FOOTNOTES

1. George W. Stocking, "The Effectiveness of the Federal Antitrust Laws: A Symposium," 39 American Economic Review 719 (June, 1949).

2. A. A. Berle, Jr., Economic Power and the Free Society (New York: The Fund for the Republic, 1957), p. 15.

3. U. S. Congress, Joint Economic Committee. An Evaluation of Antitrust Policy: Its Relation to Economic Growth, Full Employment, and Prices. By Theodore Kreps. Study Paper No. 22, 86th Cong., 2d Sess., Washington: Government Printing Office, Jan. 20, 1960, p. 2) (Hereafter cited as Study Paper No. 22, Joint Economic Committee.)

4. Indeed, One commentator noted for his tough-minded approach to antitrust problems regards the issue of basic social values as the major rather than subsidiary theme of policy development. "There has, in my opinion, been too much preoccupation in the enforcement agencies with the question what cases can be won and too little with the question what difference it makes. The second question clearly involves a consideration of whether a different structure of the market and set of business practices. . . will be better in some sense than existing structure and practices. At this point the alternative objectives of antitrust policy and how they should be related to each other. . . can no longer be avoided." Edward S. Mason, "The Current Status of the Monopoly Problem in the United States," 62 Harvard Law Review 1284-1285 (June, 1949).

5. George W. Stocking, "Economic Change and the Sherman Act: Some Reflections on 'Workable Competition'," iv The Antitrust Bulletin 375, 424 (May-June, 1959).

6. Walter Adams and Horace Gray, Monopoly in America (New York: The MacMillan Company, 1955), p. 1.

7. Robert Solo, "The New Look in the Constitutional Structure of Public Regulation," iv, The Antitrust Bulletin 503 (July-August, 1959).

8. Ibid, at 511.

9. Fainsod, Gordon, and Palamountain, Government and the American Economy (New York: W. W. Norton and Company, Inc., 1959), p. 570.
See also, Eugene Rostow, "The New Sherman Act: A Positive Instrument of Progress," 14 U. of Chi. L. Rev. 567 (June, 1947).

10. U. S. v. Aluminum Company of America, 44 F. Supp. 97 (1944); 148 F. 2d 416 (1945).

11. U. S. v. U. S. Steel Corp., 251 U. S. 417 (1920).

12. F. T. C. v. Cement Institute, 333 U. S. 683 (1948).

13. U. S. v. Paramount Pictures, Inc., 334 U. S. 131 (1948).

14. American Tobacco Company v. U. S., 328 U. S. 781 (1946).

15. U. S. v. Pullman Co, 50 Fed. Supp. 123 (E.D.Pa. 1943), aff'd per curiam, 330 U.S. 806 (1947); U. S. v. Paramount Pictures, Inc., 334 U.S. 131 (1948); U. S. v. United Fruit Co., 1958 Trade cases, Para.68941 (E.D.La.); U. S. v. Yellow Cab Co., 332 U. S. 218 (1947).

16. U. S. v. International Boxing Club, 348 U. S. 236 (1955).

17. U. S. v. Schubert, 348 U. S. 222 (1955).

18. Lorain Journal Co. v. U. S., 342 U. S. 143 (1951).

19. U. S. v. Employing Plasterers Association, 347 U. S. 186 (1954).

20. Timkin Roller Bearing Co. v. U. S., 83 F. Supp. 294 (1949); Kiefer-Stewart v. Jos. E. Seagram and Sons, 340 U. S. 211 (1951); U. S. v. Yellow Cab Co., 332 U.S. 218 (1947).

21. U. S. v. General Electric, 272 U. S. 476 (1926).

22. U. S. v. Line Material Co., 333 U. S. 287 (1948); U. S. v. U. S. Gypsum Co, 333 U.S. 364 (1948); U. S. v. New Wrinkle, Inc. 342 U. S. 371 (1952); U. S. v. National Lead Co., 332 U. S. 319 (1947).

23. See U. S. v. Insurance Bd. of Cleveland, 144 F.Supp. 684 (N.D. Ohio, 1956); U.S. v. New Orleans Insurance Exch., 148 F.Supp. 915 (E.D.La., 1957).

24. Morton Salt v. U.S., 235 F.2d 573 (10th Cir. 1957).

25. Times-Picayune Pub. Co. v. U.S., 345 U.S. 594 (1953); Northern Pacific Ry. v. U.S. 356 U.S. 1 (1957).

26. Standard Oil Co. of Calif. v. U.S., 337 U.S. 293 (1949).

27. Samuel H. Moss, Inc. v. F.T.C., 148 F.2d 378 (2d Cir., 1945).

28. Automatic Canteen Co. v. F.T.C., 346 U.S. 61 (1953).

29. U.S. v. E. I. DuPont deNemours and Co, 353 U.S. 586 (1957).

30. U.S. v. Bethlehem Steel Corp., 168 F.Supp. 576 (S.D.N.Y. 1958).

31. Solo, op. cit., pp. 505-506.

32. Adams and Gray, op. cit., p. vii.

33. Donald Dewey, Monopoly in Economics and Law (Chicago: Rand McNally & Company, 1959) p. 302.

34. Hearings Before the Antitrust Subcommittee of the House Committee on the Judiciary, 85th Cong. 1st Sess. ser. 9, pt. 1, at 17 (1957).

35. Budget of the United States Government (1951 - 1959, incl.).

36. 1957 Hearings, op. cit., p. 18.

37. Source: Department of Commerce.

38. Kreps, op. cit., p. 17.

39. Ibid, p. 2.

40. 66 Stat. 631, (1952).

41. 59 Stat. 33, (1945).

42. 62 Stat. 472, (1948).

43. Standard Oil v. F.T.C., 340 U.S. 231 (1951).

44. See "Hearings on he Economic Report of the President," Jan. 1955, 84th Cong., 1st sess., pp. 163, 164, 187, 393, 394, 2039ff.

45. Adams and Gray, op. cit., pp. 142-163.

46. For a more complete exploration of recent executive performance in the antitrust field see R. B. Wilson, "The Eisenhower Antitrust Policy: Progressivism or Conservatism?" 32 Rocky Mountain Law Review 179 (Feb., 1960).

47. U. S. v. Aluminum Co. of America, 148 F.2d 416 (1945).

48. Particularly, U.S. v. E. I. DuPont deNemours and Co., 351 U.S. 377 (1956); Kansas City Star v. U. S., 240 F.2d 643 (8th Cir. 1957); Northern Pac. Ry. v. U.S., 356 U.S. 1 (1957).

49. Charles H. McIlwain, Constitutionalism: Ancient and Modern (Ithaca: Cornell University Press, 1958), pp. 145-146.

50. See Chamberlain, Product Heterogeneity and Public Policy, 40 American Economic Review 85 (1950).

51. Consent Decree Program of the Department of Justice, Report of the Antitrust Subcommittee on the Judiciary, 86th Cong., 1st Sess.(Jan. 30, 1959).

52. Study Paper No. 22, Joint Economic Committee, op. cit., pp. 24-46.

53. Supra, p. 2.

54. See Edward S. Mason, Economic Concentration and the Monopoly Problem (Cambridge: Harvard University Press, 1957), pp. 351-370; J. M. Clark, "Toward A Concept of Workable Competition," 30 American Economic Review 241 (1940); Report of the Attorney General's Committee to Study the Antitrust Laws (Washington, D. C.: Government Printing Office, 1955), Ch. 7.

55. John Galbraith, American Capitalism, The Concept of Countervailing Power (1952); Joseph Schumpeter, Capitalism, Socialism, and Democracy (1st Ed, 1942); A. A. Berle, Jr., The Twentieth Century Capitalist Revolution (1954).

56. Schumpeter, op. cit., p. 3.

57. G. W. Stocking and M. W. Watkins, Monopoly and Free Enterprise (1951); Corwin Edwards, Maintaining Competition: Requisites of a Governmental Policy (1949); J. B. Dirlam nd A. E. Kahn, Fair Competition: The Law and Economics of Antitrust Policy (1954); W. Adams nd H. M. Gray, Monopoly in America (1955).

58. Appalachian Coals, Inc. v. U.S., 288 U.S. 349, 360 (1933).

59. Standard Oil Company of New Jersey v. U. S. 221 U.S. 1 (1911).

60. U. S. v. U. S. Steel Corp. 251 U.S. 417, 451 (1920).

61. U. S. v. Aluminum Co. of America, 148 F.2d 416 (1945).

62. U. S. v. Pullman Co. 50 F. Supp. 123 (E.D. Pa. 1943).

63. U. S. v. United Shoe Machinery Corp., 110 F.Supp. 295 (D. Mass. 1954).

64. Kansas City Star Co. v. U.S., 240 F.2d 643 (1957).

65. U.S. v. Aluminum Co. of America, 148 F.2d 416, 425 (1945).

66. Ibid, at 426.

67. Ibid, at 428.

68. American Tobacco Company v. U.S., 328 U.S. 781, 811 (1946).

69. It is true, of course, that conscious parallelism has had a declining career during the past decade nd that the Court has observed that "conscious parallel action has not yet read conspiracy out of he Sherman Act entirely." (Theatre Enterprise v. Paramount, 346 U.S. 537, 541 (1954)). However, two observations are in order here. First, the Court has been hesitant to reverse a factual finding by either the F.T.C. or the trial courts that conscious parallelism does not exist in a given situation. Moreover, the F.T.C. in particular has not been well disposed toward he doctrine in recent years. Second, the Antitrust Division has been inclined to accept the view of the Attorney General's Report and has therefore hesitated to rest its charges in whole or in part on conscious parallelism. Perhaps, then, administrative agencies should assume major responsibility for eclipse of the doctrine.

70. See Withrow, "Trade Associations," 4 Antitrust Bulletin 173 (1959), and R. Wilson, "The Eisenhower Antitrust Policy: Progressivism or Conservatism?", 32 Rocky Mountain Law Review 179, 188 (1960).

71. Morton Salt v. U.S., 235 F.2d. 573 (10th Cir. 1957).

72. M. Handler, "Recent Antitrust Developments," 13 Record of N. Y. Bar Assoc., 417, 434 (Oct. 1958).

73. See E. S. Mason, "The Current Status of he Monopoly Proglem in the United States," 62 Harvard Law Review 1271 (June, 1949).

74. For a more complete delineation of the vertical integration theme, see Kessler and Stern, "Competition, Contract, ad Vertical Integration," 69 Yale Law Journal 1 (Nov. 1959).

75. Standard Oil of California v. U.S., 337 U.S. 293 (1949).

76. U. S. v. E. I. DuPont deNemours and Co., 353 U.S. 586 (1957).

77. Kessler and Stern, op. cit. p. 28.

78. Ibid., at 30.

79. 353 U.S. 586, 595 (1957).

80. U. S. v. Bethlehem Steel Corp., 168 F.Supp. 576 (S.D.N.Y. 1958)

81. U.S. v. Maryland & Va. Milk Producers Assn. 167 F.Supp. 799 (D.D.C. 1958); 362 U.S. 458 (1960).

82. Brillo Mfg. Co., Trade Reg. Dept. Para. 272 43 (1958 Transfer Binder).

83. Crown Zellerbach Corp., Trade Reg. Rep. Para.269 23 (1957 Transfer Binder).

84. Scott Paper Co., Trade Reg. Rep. Para.277 16 (Jan. 5, 1959), reversing ibid Para. 273 12 (1958).

85. Pillsbury Mills, Inc., 50 F.T.C. 555 (1953).

86. U. S. v. Aluminum Co., 91 F.Supp. 333 (S.D.N.Y. 1950); U.S. v. United Shoe Machinery Co., 110 F.Supp. 295 (D.Mass. 1953); U.S. v. National Lead Co., 63 F.Supp. 513 (S.D.N.Y. 1945), 332 U.S. 319 (1947).

87. See Stocking, "Economic Change nd the Sherman Act: Some Reflections on Workable Competition," iv The Antitrust Bulletin 375 (May-June, 1959).

88. Ibid, at p. 394.

89. Ibid, at p. 396.

90. Donald Dewey, op. cit., Ch. XVII.

91. For an extended analysis of the scope and limits of the equal protection concept, see C. Antieau, "Equal Protection Outside the Clause;" 40 California L.Rev. 362 (1952).

91. See Tussman and tenBroek, "The Equal Protection of the Laws," 37 California Law Rev. 344 (1949); R. Wilson, "The Merging Concepts of Liberty and Equality," 12 Washington and Lee Law Review 182 (1955).

92. Eugene Rostow, Planning for Freedom (New Haven: Yale University Press, 1959), p. 3.

SUBURBAN PATTERNS IN AMERICAN POLITICS*

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Prepared for delivery at the 1960 Annual Meeting of The American Political Science Association, New York, Statler Hilton Hotel, September 8-10, 1960

Introduction

The Theses of Suburban Republicanism

Among the many consequences of American urbanism, the mass migration to the suburbs has been the most recent. These fringe towns orbit around megopolis, at once tied to it by gravitic bonds of commerce, transportation, and entertainment - and yet independent in many local affairs. A whole new literature has arisen about them, including a school of fiction depicting transplanted but rootless inhabitants who strive to find meaning in a life of metropolitan work, suburban civics, and newly adopted values. The non-fiction literature at the popular writing level has been of the whether-are-we-drifting variety, finding in these suburbs a source of concern and puzzlement about their impact upon American life.

Social research into suburbs has dwelt with the demographic characteristics, but, surprisingly little depicts the suburban political life. What there is presents suburban politics as monolithic Republicanism, a thesis originating in Samuel Lubell's writings. New immigrants and their children had realized vital aspirations through political attachment to the New Deal and as one consequence of their prosperity moved to better surroundings, eventually to the suburbs. Here they tended to switch political loyalty to the Republican party, partly because they wished to adapt to the immediate environment of these areas, but mostly because Republicanism was one characteristic of upper-class Americans, and hence for the newcomer voting Republican was an act of identification symbolic of the arrivé.

What evidence have we for this thesis appearing everywhere in popular and scholarly writings? A few studies of single suburbs have appeared or polls of suburbanites have been taken,[1] tending to substantiate Lubell. Lubell himself presents as evidence[2] the gross presidential voting returns of suburbs of the biggest metropolises, indicating a mass Republican shift. The quite recent The American Voter, although detecting the massive GOP strength in suburbs, seriously questions whether the upwardly mobile Democrat turns his coat "for just a bit of ribbon." Yet no large-scale analysis of this suburban shift has yet been made, utilizing voting returns by comparing these suburbs in earlier times with the present in elections for various offices. Such an analysis is required, not merely to substantiate the empirical fact of suburban Republicanism, but also to undergird speculations of why these newcomers vote Republican.

The Republican suburb thesis relies upon two categories of data, (1) the socio-psychological, relating to the motivations of the suburban newcomer to vote Republican; and (2) the political, which to date has consisted almost exclusively of Lubell's tabulation of the gross voting returns for presidential elections.

*The author wishes to thank the Denison University Research Foundation, which provided generously for clerical and tabulation costs, and Dr. Andres Sterrett, chairman of the Denison Mathematics Dept., who amiably led me through some techniques of statistical analysis.

This paper deals with the latter, refining the pattern of voting over a period of a quarter century, but seeks further to extend our knowledge of the socio-economic characteristics of that voting pattern.

The author's interest in what seemed an obvious state of affairs was stimulated by his awareness that some suburbs did not fit the thesis so widely ascribed to. His curiosity at these anomalies provoked certain questions. Are American suburbs heavily and increasingly Republican when contrasted with an earlier period? Is Republican growth greatest in the suburbs of greatest growth? Do all suburbs fit the notion of upper-middle class dormitories? If not, what economic or other variables may operate to distinguish among degrees of Republicanism? In short, has the exploding metropolis created a Republican fallout?

Data and Method

To pursue these queries, two sets of data were gathered and correlated. Oliver Jones has provided extensive and comparative data from the 1950 census on the economic characteristics of American cities. In this, 275 cities in the 10-25,000 population range were designated as suburbs. Various economic indices, dealt with later, provide significant data for correlation analysis.

The second set of data are election returns. To election officials in each of these 275 suburbs, requests for election contest returns were sent; after several waves of such requests, data for 152 suburbs were provided. These returns are for the presidential, congressional, and mayoralty contests. The years for which returns were required were 1932, 1948, 1952, and 1956 for the presidency, and these plus 1950 and 1954 for the congressional contests; for mayoralty contests, data were sought for all these years or those contests closest to such years. If a suburb provided all returns requested, there were four presidential, six congressional and six mayoralty contests with data. Not all suburbs provided these 16 sets; a few suburbs were not legally in existence in 1932, some do not elect a mayor, but most contests not reported was because records were not kept from the past.

In summary, these returns were designed to yield data for two dimensions of political analysis. The span of years presents a temporal dimension, permitting horizontal comparisons across time. 1932 was selected as a base year for comparison purposes because the New Deal program was not yet in evidence, indeed, not even being a part of that election campaign. The year 1948 picks up the suburb after the impact of the New Deal and the immediate post-war prosperity which others argue influence political migration to the suburb. 1952 and 1956, compared with 1948, measure the influence of Eisenhower on the suburbs. A similar temporal framework may be applied to the congressional and mayoralty contests.

Second, a vertical dimension, holding constant a given election year, permits comparisons about the degree of party support from national to local levels. Does the percentage of GOP support hold constant as we descend from the presidency to the mayoralty? Does one presidential candidate do better than another in this? In short, how Republican is the Republican suburb at several levels of voting for office?

The temporal dimension seeks to gauge horizontally how Republican the suburbs have become, while the vertical dimension gauges the intensity of Republicanism at various office levels. The two merged present a framework for ascertaining the movement of Republicanism into our suburbs. These dimensions, correlated with economic data, will sketch the profile of electoral patterns in American suburbs.

Suburban Electoral Patterns

In the following analysis, we deal with the gross voting of these suburbs for the three offices and then proceed to the temporal framework. A rough picture of the dominant pattern may be seen in Table I, which shows the mean vote for each office and each year.

TABLE I
Mean Suburban GOP Vote for Selected Offices and Years

	Presidential	Congressional	Mayoralty
1932	51.3%	54.8%	59.1%
1948	52.5	51.8	57.9
1950		56.2	66.2
1952	56.3	55.7	58.8
1954		51.9	56.8
1956	59.9	53.9	54.2

These suburbs are predominantly GOP, as known, but certain questions arise. For none of the offices did the 1948 results show a significant Republican percentage increase over 1932. Does the fact that voting for only the President shows a significant and consistent increase suggest anything about the potency of Eisenhower or about a decline in Republicanism in voting for other offices? Obviously, refinement of the mass of returns is required.

For this purpose, a classification scheme is here employed in which the vote of a given suburb for each of the three offices was placed within one of five possible sizes of GOP percentage. These are:

1. 0 - 34%, one-party Democratic vote
2. 35-44%, one-party modified Democratic vote
3. 45-55%, marginal vote
4. 56-65%, one-party modified Republican vote
5. 66-100%, one-party Republican vote

This classification scheme has several advantages. The range of the "marginal" vote reflects the professional politican's estimate of a "close" area. The two "modified one-party" ranges reflect areas which, as Key have noted, are different from one-party areas in their activities. Further, such a scheme permits a range for plotting the movement of vote for one office across several elections or for noting variation among office votes in a given election.

Presidential Patterns

To demonstrate the uses of this system and begin the analysis, Table II compares the number and percentage of suburbs falling in each classification for presidency in the four elections. Table II-A compares the small number of 1932 suburbs reporting (79) with all suburbs in later years (approximately 150), while Table II-B follows in later years only the seventy-nine 1932 suburbs, a subsample analysis. In subsequent tables, these two sets of data are presented separately.

TABLE II-A
Distribution of Presidential Suburban GOP Vote

	N				%			
GOP Percent	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	11	29	17	10	14%	20%	11%	7%
35-44	19	24	27	19	24	17	18	12
45-55	14	27	30	30	18	19	20	20
56-65	15	27	28	33	19	19	18	22
66-100	20	36	50	60	25	25	33	39
Total	79	143	152	152	100%			

TABLE II-B
Distribution of Suburban Vote Percentage for President for Sample of 1932

	N				%			
GOP %	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	11	12	6	3	14%	15%	8%	4%
35-44	19	16	14	9	24	21	18	11
45-55	14	12	15	14	18	15	19	18
56-65	15	14	17	17	19	18	22	22
66-100	20	24	27	36	25	31	34	46
Total	79	78	79	79	100%			

In both sets of data, the pattern is consistent, and is particularly clear when the heavily Democrat and Republican categories are combined. We see that there was little shift between 1932 and 1945; the post-war increase in Republican suburban vote was not yet evident by 1948, for there were significant numbers of suburbs voting Democratic. But the Eisenhower candidacy brought the sharp increase in Republican and decrease in Democratic votes. While the number of suburbs voting in the Marginal range remains constant throughout, the Republican weight of suburbs voting in the Republican range increases by better than 50% and the Democrats decreased by an equivalent amount. In 1948, suburbs voting Democratic and Republican were surprisingly even in number, but by 1956 the Republicans outnumbered the Democratic suburbs by better than three to one. By 1956, four out of six suburbs were voting Republican, and one of six was either Democratic or Marginal.

Congressional Patterns

The picture presented by suburban voting for Congress, shown in Table III, is similar but less massive.

TABLE III-A
Distribution of Congressional Suburban GOP Vote

	N				%			
GOP%	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	7	30	23	28	9%	22%	16%	19%
35-44	15	21	20	17	19	15	14	11
45-55	17	28	27	26	22	20	18	17
56-65	17	21	30	35	22	15	21	23
66-100	23	38	46	45	29	28	32	30
Total	79	138	146	151	100%			

TABLE III-B
Distribution of Suburban Vote Percentage for Congress for Sample of 1932

	N				%			
GOP %	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	7	14	10	12	9%	18%	13%	15%
35-44	15	11	6	7	19	14	8	9
45-55	17	14	17	11	22	18	22	14
56-65	17	13	15	20	22	17	19	25
66-100	23	25	30	29	29	32	38	37
Total	79	77	78	79	100%			

Although the two sets of data do not compare as closely as for the presidential pattern, we see again that the suburbs voting Republican for Congress have increased substantially and the suburbs voting Democratic and Marginal have decreased. In Table III-A, for all suburbs, the Democratic and Republican suburbs

were surprisingly equal in number in 1948, but by 1956 the rate of Democratic to Republican was 1::1.75, with the Marginal suburbs remaining roughly the same throughout. Table III-B, the suburban sample comparing the same suburbs from 1932 on, shows a similar pattern. Interesting here is that between 1932 and 1948, surprisingly little shift had occurred in the distribution of the suburbs' vote, a finding paralleled in the presidential pattern. But again, whether because of the Eisenhower candidacy or other factors, in post-1948 congressional elections, the suburbs were moving increasingly into the Republican column, but not at the same rate as they were for the presidency.

Mayoralty Patterns

The pattern of Republican gain noted for congressional and presidential vote altered in the mayoralty vote. Table IV provides the relevant data.

TABLE IV-A
Distribution of Mayoralty Suburban GOP Vote

	N				%			
GOP %	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	1	5	4	6	3%	9%	7%	11%
35-44	4	7	11	8	12	13	19	14
45-55	13	14	16	22	38	25	27	39
56-65	9	15	14	11	26	27	24	19
66-100	7	14	14	10	21	25	24	18
Total	34	55	59	57	100%			

TABLE IV-B
Distribution of Suburban Vote Percentage for Mayor for Sample of 1932

GOP %	1932	1948	1952	1956	1932	1948	1952	1956
0-34%	1	2	0	1	3%	6%	0%	4%
35-44	4	4	7	3	12	12	23	11
45-55	13	7	12	14	38	22	40	50
56-65	9	7	3	5	26	22	10	18
66-100	7	12	8	5	21	38	27	18
Total	34	32	30	28	100%			

At this level, where we must deal with a smaller number of suburbs and where mayoralty elections before and after a presidential year are combined with elections for that year, we can speak far less confidently about our results. It is possibly because of these limitations that the pattern in mayoralty contests varies from the preceding.

In both the 1948-1956 data of Table IV-A and 1932-1956 data of Table IV-B, the Democratic share of suburban vote in mayoralty races is smaller than for presidential and congressional contests, but it does not indicate the significant loss found in other contests. The Republican share, however, reveals a drastic decrease in both tables, although, as Table IV-B shows, between 1932 and 1948 the Republican share of suburbs increased by one-quarter; substantial Republican mayoralty losses occur after 1948 in the same period when Republican gains are being made in the Congressional and presidentials. It is the Marginal suburb that has increased its weight in the mayoralty contests. Table IV-A shows that the Democratic and Marginal suburbs had one-quarter each and the Republican suburbs one-half of the distribution; but by 1956, while the Democratic suburbs constitute one-quarter, the

Marginal and Republican suburbs are now equal in the distribution. The subsample analysis of Table IV-B reveals that the Marginal suburb is even larger, constituting one-half of that sample.

Movement of Party Vote

The analysis to this point has dealt with the office as the central focus. Rearranging the data of the preceding tables to focus upon the type of party vote, combining the two categories of Democrats into one and likewise for Republicans, we achieve Table V.

TABLE V

Distribution of Suburban Vote Percentage by Party Categories

A. All Suburbs, 1948-1956

Suburbs Voting:	Office	Percent of Office in Party Category 1948	1952	1956
D	P	37	29	19
	C	37	30	30
	M	22	26	25
M	P	19	20	20
	C	20	18	17
	M	25	27	39
R	P	44	51	61
	C	43	53	53
	M	52	48	37

B. Subsample, 1932-1956

		Percent of Office in Party Category 1932	1948	1952	1956
D	P	38	36	26	15
	C	28	32	31	24
	M	15	18	23	15
M	P	18	15	19	18
	C	22	18	22	14
	M	38	22	40	50
R	P	44	49	56	68
	C	51	49	57	62
	M	47	60	37	36

These tables enable us to examine more closely the movement of party vote. Thus, Table V-A on the post-war decade, shows the Democratic distribution holding constant for mayoralty contests, but dropping off for the other two offices, particularly in the presidential vote. Table V-B verifies the Democratic picture when extended back to 1932, but both emphasing the loss comes only with Eisenhower's candidacy; it is striking to note that between 1932 and 1948, the Democratic share of all three offices showed little change. The distribution of Marginal suburbs is different, constant for the top two offices, but increasing substantially in mayoralty contests; again the subsample analysis of Table IV-B verifies this Marginal pattern, although the gain in mayoralty contests comes earlier and more heavily compared to Table V-A.

A third pattern appears in the Republican distribution. In the post-war decade,

the Republican share of suburbs increased very heavily in presidential and congressional contests but fell off equally heavily for mayoralty contests. This latter is not a sign of weakness, however, for except in the mayoralty contests of 1956, the Republican share of all offices for all years exceeded either the Democratic or Marginal share, reaching a peak in the 1956 presidential election, where these 61% of suburbs were Republican. However, per contra, the rate of Republican increase was proportional to the level of office, ascending in the presidential races, leveling off in congressional races, and actually decreasing consistently in mayoralty contests. The subsample of Table V-B also demonstrates roughly the Republican pattern shown here; in the 1932-1948 comparison we see the Republican share of mayoralty contests had grown sharply and the share of presidential contests had increased slightly.

In summary, while in 1932 only a few more suburbs in this sample were GOP than Democratic in presidential voting, by 1956 they were 3 - 1 GOP. Suburbs in 1932, almost 2 - 1 in their GOP preference for congressmen, were by 1956 better than 2 1/2 - 1 GOP, but the percent of all suburbs remaining Democratic fell off only slightly. In the mayoralty contests, the marginal suburbs have increased substantially and GOP suburbs decreased, with the proportion of Democratic suburbs remaining small but constant.

From this emerges a gross pattern of politics in American suburbs. As Lubell has indicated, the stamp of Republicanism appears heavily in these areas, but that stamp is lighter for some offices than for others and the heavier imprint does not appear until 1952. Indeed, the degree of Republicanism in these suburbs is directly proportional to the level of the office, declining with offices at lower levels, so that at the level of the mayor there is no longer a majority of suburbs voting Republican. This should not dilute the importance of Republican suburban voting at the state and national level, however, for as Lubell has observed, "The new importance of the suburbs, of course, reflects the fact that nearly a fifth of the nation's population now lives there."[3] (Lubell, Revolt of the Moderates, Harpers, New York, 1956, p. 276-7). Recent 1960 census results place this proportion at one-third. What these electoral data suggest, however, is the necessity to distinguish among the varieties of political experience; suburbia is not as conformist politically as has been argued.

The analysis to this point has been rather broad, suggesting other directions for analysis. Most clearly we have inferred "movement" of suburbs' political allegiance. Charting of that movement should help fill in the picture.

Changing Pattern in Suburban Voting

Movement vs. Stasis: General

The technique of charting possible movement rests upon the categories of vote in each election used before. But instead of the five categories (one-party Democrat, one-party modified Democrat, marginal, one-party modified Republican, and one-party Republican), we here employ 3 categories, Democrat, Marginal and Republican. Three categories provide nine possible combinations of change; a suburb of one category in 1932 could by 1956 have remained the same or have moved into one of the other two. Thus, D→D, D→M, D→R, R→R, R→M, R→M, M→M, M→D, M→R. The questions now to be considered are how much movement has occurred and in what direction?

TABLE VI
Movement of Suburban Vote for Selected Offices, 1932 to 1948 and 1956

	Presidential		Congressional		Mayor	
	1932-1948	1932-1956	1932-1948	1932-1956	1932-1948	1932-1956
D→D	30%	10%	23%	16%	6%	9%
D→M	5	14	4	8	6	6
D→R	3	14	1	4	3	0
R→R	35	40	37	42	41	21
R→M	8	1	6	4	6	24
R→D	1	3	6	5	3	3
M→M	3	3	8	6	9	21
M→D	4	1	3	1	9	6
M→R	12	13	12	14	16	12
Total	100%					

If in Table VI we combine the categories for each office into two classes, those showing movement and those remaining constant since 1932, we derive Table VII.

TABLE VII
Percent of Movement vs. Stasis in Suburban Voting Status, 1932 vs. 1948 and 1956.

	1932-1948		1932-1956	
	Movement	Same	Movement	Same
Presidential	32%	68%=100%	47%	53%=100%
Congressional	32	68	35	65
Mayoralty	56	44	50	50

From 1932 to 1948, the percent of suburbs showing movement is small except for mayoralty voting, while the 1932-1956 comparison shows greater movement in the presidential vote as well; the suburbs' vote for congressmen shows relatively little change in either comparison. In summary, (1) the degree of movement or constancy is a function of the office vote being considered, (2) a substantial amount of these suburbs have not changed their political affiliation, particularly in voting for congressmen, but (3) the greatest turnover has come for the mayoralty and then presidential voting.

Movement vs. Stasis: Presidency

Such is a gross analysis, however, which can be refined by references back to Table VI which will show the patterns of movement. In the presidential voting, few of the Democratic suburbs remained Democratic by 1956; movement from this to a Marginal or Republican status occurred far more in 1956 than in 1948. The greater number of Republican presidential suburbs in 1932 remained so in both later elections, with very few defections. The bulk of the 1932 Marginal suburbs moved in a Republican direction in later elections. In precise terms how had the 1932 suburbs moved by 1956 in voting for the presidency?

TABLE VIII
Distribution of Movement and Stasis in Presidential Vote, 1932-1956, by Percentage

1932 Pattern	Distribution by % in 1956			
	D	M	R	
D	[27]*	37	37	= 100%
M	14	[14]	71	
R	6	3	[91]	

*The cells outlined are those indicating no movement.

Clearly in Table VIII above, charting distribution of this movement, we witness a strong surge toward Republican presidential voting as the Democratic suburbs became Marginal or Republican and the Marginal suburb went heavily to the Republican status.

Movement vs. Stasis: Congress

In these suburbs' congressional voting, Table IX reveals that the movement to a Republican status was much less and suburbs tended to retain their 1932 status more than they did when balloting for the presidency, although the M→R movement is still large. Democratic stasis doubled at this level, while Republican stasis decreased only slightly. Here, then, is a pattern of less effect of the Republican movement in suburb voting.

TABLE IX

Distribution of Movement and Stasis in Congressional Vote, 1932-1956, by Percentage

	% Distribution in 1956			
1932 Pattern	D	M	R	
D	[59]	27	14	= 100%
M	6	[29]	65	
R	10	7	[82]	

Out of five suburbs giving a majority of their vote to Democratic congressional candidates in 1932, three still did so almost a quarter century later; of those who no longer did so, only one-third (or 14% of all of the Democratic 1932 suburbs) were Republican. The Marginal suburbs of 1932, however, did move heavily into the Republican suburbs, almost two out of three making that move. The Republican suburbs held their own very well, about five out of six retaining that status; but a few more than in the presidential vote did move into the Marginal and Democratic columns. This two-way movement was, however, decidedly to the GOP advantage; specifically, 14 of the non-Republican 1932 suburbs were Republican by 1956, while only 7 of the Republican 1932 suburbs moved away in 1956. The picture here, then, is not one of a clear-cut Republican gain; if Democratic or Republican in 1932 congressional voting, a suburb was most likely in 1956 to be still so, but if Marginal in 1932, it was very likely Republican by 1956.

Movement vs. Stasis: Mayoralty

Descending even further into the levels in which the parties must wage contests, we find yet another pattern of movement. Unfortunately, we deal with only 34 of the sample in Table X.

TABLE X

Distribution of Movement and Stasis in Mayoralty Vote, 1932-1956, by Percentages

	% Distribution in 1956			
1932 Pattern	D	M	R	
D	[60]	40	0	= 100%
M	15	[54]	31	
R	6	50	[44]	

Little of the movement toward Republicanism noted in presidential and congressional voting appears at the local level. What little there is (the 31% of Marginal suburbs going Republican in 1956) is overbalanced by the movement of Republican suburbs to a Marginal status (50% of the 1956 Republican suburbs).

Three out of five suburbs voting Democratic in 1932 for this office continued doing so in 1956, while the other two became Marginal areas. Over half of the 1932

Marginal areas were still that 25 years later, the remainder moving Republican by 2 - 1 over the Democrats. One-half of the 1932 Republican suburbs, however, had shifted to marginal areas by 1956, with only 44% remaining true to the faith. What we have here suggests, keeping in mind the limited number of suburbs employed, that the decline in the movement toward Republicanism in the suburbs, noted in the congressional vote, continues more sharply in mayoralty contests. This reinforces the same point made at the conclusion of the previous section.

Types of Party Competition in Suburbs

Methodology

Analysis to this point has dealt with the extent of suburban Republicanism as reflected in the incidence and change of mean returns for specific offices in specific years. But when we deal with means in the range of 50-60%, there is the obvious inference that some suburbs may be below as well as above that range. Specifically, some of these suburbs may not be Republican at all, but Marginal or even Democratic. We turn then to an analysis of the degree of party competition in our sample.

The Ranney and Kendall typology[4] utilized for states was applied to the 152 suburbs. This classification scheme distinguishes among the kinds of party competition based upon the percent of contests won by the second party and upon the size of the second party's vote. Suburbs in which the second political party won over 25% of the contests were Two Party. Of the remainder, a suburb was designated Modified One Party if the second political party won (a) over 30% of the vote in 70% of the elections, and (b) over 40% of the vote in 30% of the elections. If the second political party fell below these minimum signs of competition, it was designated One Party. This scheme provides five types of party areas: One Party Democrat (OPD), Modified One Party Democrat (MOPD). Two Party (TP), Modified One Party Republican (MOPR) and One Party Republican (OPR).

Hereby we have a continuum of party competition permitting a fuller picture of one area's party activity than any one election may do. Unavailability of returns from all suburbs in this population range, incomplete returns even from those complying, and omission of the election contests from 1934 to 1946 are important limitations on the validity of what follows; to the first two one may merely comment that analysis must begin sometime, utilizing statistical tests to check reliability of limited data; to the last limitation one may offer that inclusion of the New Deal elections (which would have cut down on the incidence of Republicanism) would distort what has happened in the post-war era. What we do have are for each suburb a possible 16 contests, the bulk in this latter era, which range the voter choice from lowest to highest office.

The General Pattern

The distribution of the suburban data within this scheme appears in Table XI.

TABLE XI
Distribution of Party Area Types in Suburbs, 1932-1956

	N	%
OPD	25	16.5
MOPD	20	13.2
TP	26	17.1
MOPR	35	23.0
OPR	46	30.2
	152	100.0%

At first glance, this distribution seems the anticipated one, as there is a greatly increased proportion as one enters the Republican area types. But there are several surprises here. Foremost is the incidence of non-Republican suburbs, just under one-half of the total sample. A surprising one-sixth are OPD, another one-eighth is MOPD, a total of almost one third of this sample being heavily Democratic in its political characteristics. Indeed, in some of these Democratic suburbs, the Republicans have yet to gain a bare majority for any office. It is in this finding that one realizes the shortcomings of the mean as a statistical index, that mean which in previous sections cast an air of exclusive Republicanism over the whole sample. For, as we now see, in every six suburbs it is true that 3 are Republican, but another 2 are Democratic and 1 is TP. In that last figure little joy will be found by those concerned that parties be competitive in order to ensure responsibility. For out of 6 suburbs, 3 are OP, 2 are MOP, and only 1 is a TP area.

Movement vs. Stasis in Types of Party Area

But, as earlier sections have demonstrated, forces operate in these areas to cause shifts in voting support, so it may well be asked whether the preceding data are not too static. What movement has occurred, and in what kinds of party areas? To answer this, a rough scale of vote shift is utilized measuring shift from 1932. The comparison here is between the presidential and congressional vote in 1932 and the median vote for these offices in the years 1948, 1952, 1956; this means in most cases one of the Eisenhower years. If the latter varies less than ± 5% points from 1932 percents, we will regard this as no shift, or "Same." If the Republican vote has decreased by more than 5% points, the designation is "Loss" (actual losses ran from 6-38% points). If the Republican vote has increased by more than 5% points, the designation is "Gain" (actual gains ran from 6-30% points). To simplify the analysis, we use 3 party types, D, TP, and R, instead of the five in Table XI. This is the classification scheme which provides Table XII.

TABLE XII

Change and Stasis of GOP Vote in Party Area Types, 1932 to Post-War Elections

A. Distribution of Kinds of Change by Party Area Types

		N	%N	D	TP	R
	Loss	10	13%	23%	14%	7%
Presidential	Same	25	32	32	29	33
	Gain	44	56	45	57	60
		79	100%	100%		
	Loss	15	19%	40	14	11
Congressional	Same	26	33	25	57	30
	Gain	37	47	35	29	59
		78	100%	100%		

B. Distribution of Party Area Types by Kinds of Change

		N	%N	Loss	Same	Gain
	D	22	28%	50%	28%	22%
Presidential	TP	14	18	20	16	18
	R	43	54	30	56	59
		79	100%	100%		
	D	20	26%	53	20	19
Congressional	TP	14	18	13	31	11
	R	44	56	34	50	71
		78	100%	100%		

Table XII-A indicates that in all three types of party area, the characteristic presidential vote movement is a Republican gain, the gains increasing consistently along the party type continuum, although the Democratic and Two Party suburbs are not as enthusiastic. Table XII-B indicates, furthermore, that the Republican strength comes from Republican suburbs where it either held or gained on its 1932 presidential vote level, but fell off in Democratic type suburbs. The congressional vote pattern is less clear. More congressional Republican vote Loss occurred in Democratic areas and less in Two Party and Republican areas than is proportional; areas of Same vote were proportional in Democrat and Republican areas, but significantly larger in Two Party areas; Republican congressional gain occurred primarily in Republican areas.

To restate this comparison, we note, the characteristic movement in the three types of political party areas to be: (1) Democratic areas show some Republican gain for presidential voting, but less for congressional voting; (2) Two Party areas show even heavier Republican gains for presidential voting but for congressional voting tend to hold the 1932 pattern, and (3) in Republican areas most show gains for both offices. When the Republican vote for both offices showed a Loss, it was primarily in Democratic areas, when it showed the Same for both it was mostly in Republican areas, and when it showed a Gain it was heavily in Republican areas.

Table XIII below is most instructive of what kinds of shift occurred in party areas in presidential voting in the post-war years. Here the method is to measure these party areas' voting change or constancy, as rated against the ranges used earlier in Table VI.

TABLE XIII

Movement of Presidential Vote by Party Areas, 1948-1956

Range of Vote %	N	Dem. Areas	TP Areas	R Areas
D	27	54%	11%	- %
D→M	21	32	27	-
D→R	7	14	4	-
M	7	-	15	4
M→R	16	-	35	9
R	71	-	8	87
	149	100%		
		N = 44	N = 26	N = 79

Here we see that Democratic and Republican suburbs tended strongly to support their presidential condidates consistently; the Democratic suburbs, however, are somewhat more prone to shift, although anther calculation shows 57% of all suburbs shifting and so only in 1956, marking again the tremendous pull of the Eisenhower candidacy. The Two Party suburb evidences considerable variation, some 2/3 of them showing movement, as befits the shifting winds of a truly competitive area. But the overall picture is one of stasis; 70% of these suburbs in 1956 registered in the same voting range as they had in 1948, while only the remaining 30% moved, in all cases away from the Democratic or Marginal ranges toward increasing Republicanism.

All of this reinforces the Lubell thesis of the increasing Republicanism of these suburbs but with some reservations. There are surprisingly large numbers of non-Republican suburbs; even in these, however, some shift towards Republican voting for the Presidential is evident; this shift, on the other hand, does not carry strongly down to Congressional voting; some suburbs, furthermore, are not participating in this movement whether movement is measured by winning contests or simply increasing the Republican percentage.

The Non-Contagion of Republicanism from Office to Office

This conclusion of the gap between suburban voting for Eisenhower and Republican congressman, an electorate characteristic well known in other voting units, can be validated by determining statistically the size and location of the differences in Republican percentages for Eisenhower and Republican congressman. In Table XIV, three categories of this presidential-congressional vote relationship are employed. The Republican vote in any given suburb might be, (1) roughly equal (no more than 5% points different), i.e. P = C; (2) Congressional greater than Presidential (+5% points), i.e. P<C, or (3) Presidential greater than Congressional (+5% points), i.e. P>C. The following table presents, first, the summation of these relationships, and then the breakdown by political party areas.

TABLE XIV

Relationship of Presidential and Congressional Vote by Party Areas, 1948-1956

	1948		1952		1956	
	N	%	N	%	N	%
P<C	21	15%	25	17%	8	5%
P=C	93	67	88	60	70	46
P>C	25	18	33	23	73	48
	139	100%	146		151	

	1948			1952			1956		
	D	TP	R	D	TP	R	D	TP	R
P<C	10%	25	15	7	28	19	0	19	4
P=C	71	50	70	70	40	62	30	31	60
P>C	19	25	15	23	32	19	70	50	36
	100%								
N =	42	24	73	43	25	78	44	26	81

The picture of suburban voting defined here is that, while the two offices' Republican vote in 1948 and 1952 was equal in 60-67% of the suburbs, in 1956 Eisenhower left his congressional running mates far behind. This separation, furthermore, occurred consistently in all three party areas but more sharply in Democratic areas; the percentage of P>C suburbs between 1948 and 1956 doubled in Two Party and Republican areas but better than tripled in Democratic areas. In such a movement, the percentage share of P = C and P<C necessarily declined; P = C patterns in Democratic areas declined drastically by better than one-half, in Two Party areas by 40%, and in Republican areas by only 15%, while P<C patterns virtually disappeared in all but 8 suburbs. None of these movements cited here were very great between 1948 and 1952, but whatever factors motivated suburbanites to view Eisenhower and Republic Congressman differently appeared during his first term, for the vote separation between the two appears drastically wide in the 1956 election.

The Republican vote differential between these two offices appears also when the mayoralty vote is compared, as in Table XV.

TABLE XV

Relationship of Presidential and Mayoralty Vote by Party Areas, 1948-1956

	1948		1952		1956	
	N	%	N	%	N	%
P<M	25	46%	27	43%	11	18%
P=M	12	22	15	24	14	24
P>M	17	32	21	33	34	58
	54	100%	63		59	

	1948			1952			1956		
	D	TP	R	D	TP	R	D	TP	R
P<M	60%	67	33	41	50	42	20	20	18
P=M	13	33	23	35	20	19	33	30	18
P>M	27	0	43	24	30	39	47	50	65
	100%								
N	15	9	30	17	10	36	15	10	34

This table also reveals the greater popularity of Eisenhower than his running mates, again as seen particularly in the 1956 election, which shows a 100% increase over 1948 in the number of suburbs P>M. Again, this separation occurs increasingly in all three kinds of party areas, but particularly in the Democratic suburbs; even the small number of Two Party suburbs show this separation. This shift in areas involves movement along the continuum of the three relationships above, i.e. the percent of Democratic P<M declines from 1948 to 1956 by two-thirds while the P=M increases 2½ times and P>M increases by three-quarters; the same pattern is visible in the Two Party areas and, to a lesser degree, in Republican areas.

Comparative analysis of the PC and PM separation finds that Eisenhower increasingly outpulled his ticket mates; that Republican presidential vote percentage is more likely to be equal to, rather than higher or lower than, the Republican congressional vote but that no such parallelism exists in the mayoralty Republican vote, for - oddly enough - in a surprising number of these suburbs, including the Republican ones, the Republican percent for mayor exceeds that for President (in 1948 and 1952 there was a higher percent of P<M than P>C); that by 1956 the percent of P>M is less than the percent of P>C in Democratic suburbs, the same in Two Party suburbs, and greater in Republican suburbs; that, in short, it was only in 1956 that the Republican presidential percentage grew so great as to exceed both congressional and mayoralty vote, while in 1948 and 1952 the Republican presidential percentage only equalled the congressional percentage but was outmatched by the mayoralty percentage. Again, these data testify to the proposition that as one descends the layers of American federalism, suburban Republican dominance falls off.

Economic Correlates of Political Patterns

The Ecology of Suburbia

To this point, the scales utilized and the suburban patterns thereby derived have been political only. As a result, we have noted that Republicanism is not characteristic of all these suburbs - indeed only 50% can be so designated - and that the degree of Republicanism varies with time and the level of office studied. The explanations for the existence of non-Republican suburbs need be sought for; certainly none such is found in ascribing this to the presence of Southern suburbs in our sample, for only two are included (Phenix City, Ala., and S. Norfolk, Va.).

An approach to understanding these patterns may be found in introducing an ecological concept rarely treated in political analysis but quite familiar to sociology -- the non-dormitory suburb. Our political analysis has treated the suburbs everywhere as having similar characteristics -- residential, peopled by middle-middle to upper-middle class or higher status, economically containing only retail businesses (the hive-like shopping centers), mass emigration at morn and immigration at dusk of the breadwinners, etc. Readers of Whyte's Organization Man or almost any novel about suburbia will recognize these traits - or symptoms.

But there is another kind of suburb - the industrial. As early as 1925, H. Paul Douglas, writing on The Suburban Trend, recognized these two types, referring to the "suburb of consumption," the now familiar and publicized type, and the "suburb of production," the latter also lying adjacent to central cities but providing jobs for their own residents as well as others.[5] While the latter sends out goods and services and brings in persons, the suburb of consumption reverses this flow. This dichotomy was only touched upon in the 1930's but elaborated upon by C. D. Harris in a significant article a decade later.[6] During the 'fifties, sociologist Leo F. Schnore submitted the dichotomy to extensive analysis to validate it as a meaningful ecological concept.[7]

Time does not permit here full treatment of Schnore's analysis, but a recapitulation of his findings is necessary. He relates a long history of these industrial suburbs; notes their prescence in every part of the country; finds their identifying economic activity may be manufacturing (light or heavy), education and recreation, extractive (oil and mining) and government; shows the residential suburb's rate growth was exceeding that of the industrial suburb, during the 1940's by almost twice, 31.9% to 17.0%; indicates that the former's increase is a function of better "housing opportunities," whereas the growth of regions and central cities is a function of more employment or economic opportunities; and concludes that as people will live where there are greater housing opportunities, preferring to drive to work or nearby industrial suburbs or central city, the residential suburb will continue to grow at a higher rate than that of the industrial suburb.

The application of this dichotomy to suburban politics offers opportunity for exploring several propositions. Is it possible that the patterns of suburban party competition noted earlier arise because we are dealing with different economic types? Metropolitan voting studies have noted that party voting is a function of such economic indices as income, home ownership, land evaluation, etc., so it seems a likely hypothesis that the two economic types of suburbs which ecologists have delineated are also distinguished by affiliation with different parties.

Economic Indices of Suburban Voting

The economic indices utilized for this part of the study are drawn from Oliver Jones' extensive tabulations.[8] A manufacturing index (Mfg.) is a measure of the proportion of manufacturing in the total business volume of the suburb. A rental level index (RL) involves 4 categories: RL-1 is $5 below the average for the area; RL-2 is the area average; RL-3 is $5 above that average, and RL-4 is $10 above that average - thus a scale of 1 - 4 from low to high rent suburbs. A housing growth index (HG) is the proportion of total housing in 1950 which was build in the 1940's. An employment-residence ratio (E/R) relates those coming into a city to work during the day against those going out to work.

These four indices are assumed here as indicators of the production vs. consumption suburb. The first assumption is that we more likely deal with a production suburb when the Mfg. and E-R indices are high and the RL and HG indices are low;

high E-R means a greater influx into the suburb, obviously for employment purposes indicated by the high degree of Mfg., while a low RL is characteristic of industrial areas and low HG index seems likely where productive capacity is high or expanding, thereby reducing availability of land for new housing. The second and corollary assumption is that we more likely deal with a consumption or residential suburb when the opposite condition in the four indices obtain, i.e. low Mfg. and E/R plus high RL and HG.

If we can assume these indices to measure production vs. consumption or residential suburbs, can we show that the former is characteristically Democratic and the latter Republican?

Economic Correlates: Presidential Voting

Table XVI locates within sub-categories of these four major economic indices the mean Republican percentage for president in selected years.

TABLE XVI
Mean GOP Presidential Percentage by Four Economic Indices

Index		Mean GOP % 1948 N	%	1952 N	%	1956 N	%
A. By Mfg. %:							
	- 50%	38	60%	40	62%	40	65%
	+ 50%	43	43	46	48	46	55
B. By RL:							
	1	13	34%	13	39%	13	40%
	2	86	46	90	51	91	56
	3	39	69	43	71	43	73
	4	4	77	4	73	4	66
C. By E/R:							
Quartile	1	34	61%	38	65%	39	66%
	2	36	56	37	60	37	63
	3	36	47	38	51	38	56
	4	36	45	37	48	37	54
D. By HG:							
Quartile	1	35	48%	37	51%	37	57%
	2	35	54	39	59	39	64
	3	37	51	38	55	38	59
	4	36	55	37	61	38	60

These data demonstrate the validity of the proposition that the different economic types of suburbs also reflect a different presidential voting pattern. The mean Republican percentage of suburbs with production suburb characteristics (high Mfg. %, low RL, high E/R ratio) is significantly lower than the mean Republican percentage of suburbs with consumption suburb characteristics (low Mfg. %, high RL, low E/R ratio). By null hypothesis analysis, all differences are significant at the 1% level or less (indeed, most are significant at the 0.1% and 0.01% level). Only the HG index fails to discriminate sharply or consistently.[9]

Without recapitulating the entire cross-tabulation involved here, Table XVII further sharpens the relationship among these political and economic factors. Here, the pairs in the left column show, first, characteristics of productive (industrial) suburbs, and second, characteristics of consumption (residential) suburbs.

TABLE XVII
Mean GOP Presidential Percentage by Paired Indices

Paired Indices	1948	1952	1956	N
Low RL-High Mfg. (Mfg. 2+RL1)	28%	34%	43%	8
High RL-Low Mfg. (RL3+Mfg. 1)	77 (N = 11)	76	77	13
Low RL-High E/R (RL1+E/R 4)	25%	30%	40%	6
High RL-Low E/R (RL3+E/R 1)	69	71	73	23
High Mfg.-High E/R (Mfg. 2+E/R 4)	39% (N = 20)	44%	49%	21
Low Mfg.-Low E/R (Mfg. 1+E/R 1)	67 (N = 12)	70	72	14

The consistent gap between the Republican mean percentages is drastic and dramatic evidence that when we describe either of these two type suburbs in economic terms we can describe its presidential voting habits in the post-war period.

Economic Correlates: Party Type Areas

Indeed, we may go further than even this. When we apply these economic indices to party areas, covering a longer period and more elections, a sharp distinction emerges, as seen, in Table XVIII.

TABLE XVIII
Economic Correlates of Party Areas

Indices	OPD	MOPD	Mean of D	TP	MOPR	OPR	Mean of R	Total
By Mfg. %:								
N	13	13		18	18	24		
Mean Mfg. %	59	79	= 69%	55%	44	36	= 39%	
By RL:								
1 N =	6	3		1	2	1		13
2	18	17		20	24	13		92
3	-	-		5	7	30		42
4	-	-		-	2	2		4
Mean RL	1.75	1.85	= 1.79	2.15	2.26	2.72	= 2.52	2.24
By E/R:								
N	25	20		26	35	46		152
Mean Ratio	125	123	= 124	96	123	66	= 91	100
By HG								
N	25	20		26	35	46		152
Mean HG%	20.3	22.1	= 21.1	26	26.5	21.4	= 23.6	23.2

In all indices, except again HG, economic characteristics vary sharply with the party type area. A high degree of manufacturing, a lower RL, and a higher E/R ratio are associated with Democratic areas, the reverse characteristics with Republican areas, and median index levels with Two Party areas. The distinction is not

precise, however. A smaller than anticipated Mfg. % prevails in OPD areas, three Republican suburbs are in the lowest RL category, and the mean E/R ratio for MOPR areas is equivalent to that in both type Democrat areas. But the direction of the data impressively indicates the relationship between economic and political characteristics.

A final word should be made on factors which do not group themselves to validate the distinction between productive and constructive suburbs. We have seen that HG data do not fit the notion that the mushrooming suburb is also one of growing Republicanism. Nor can we say that there is a relationship between population and Republicanism. Table XIX is instructive on this point.

TABLE XIX

Party Type Areas and Population Size

	OPD	MOPD	D	TP	MOPR	OPR	R
Pop. Mean	15.8	15.8	15.8	16.5	16.4	15.1	15.6
N	25	20		26	35	46	

Distribution of Party Types by Population

	% of N	% of D	% of TP	% of R
10-14,999	51%	49%	46%	54%
15-18,999	25	27	27	23
19-25,000	23	24	27	22
	100%			

No significant difference appears here in the population characteristics of different party type areas. There is only a difference of 1400 between the lowest and highest population means, and all three major party type areas draw proportionately from small, middle, and high populated suburbs. This last is most illuminating, for one would expect, ex hypothesis, that Democrats areas would draw more heavily from bigger suburbs and Republicans from smaller suburbs, according to the accepted fact that Democratic strength increases with bigger population areas and Republicanism with smaller population areas. But here, all party type suburbs draw most heavily (one-half) from lower population suburbs.

SUMMARY

We can now assemble some of the major findings of this research.

1. Between 1932 and 1948 in both presidential and congressional contests there was little GOP percentage increase, indeed the numbers of Democrat and Republican suburbs were even, but the Eisenhower candidacy did bring a sharp percentage increase. In mayoralty contests, however, Republican vote declined sharply, as Marginal suburbs increased heavily.

2. The movement or constancy of suburb voting behavior is a function of the office considered, for Republican movement is not general for all offices. A surprisingly large amount of these suburbs have retained their earlier voting pattern, while such change as occurred came in presidential and mayoralty voting. In presidential voting, suburbs Democrat and Marginal in 1932 moved heavily to a Republican status in 1956. In congressional voting, a Democrat or Republican suburb of 1932 was most likely still Democrat or Republican in 1956, while a 1932 Marginal suburb was very likely Republican in 1956. In mayoralty voting, over a half of the Democrat and Marginal suburbs retained their status

by 1956, while over half of the Republican suburbs had changed.

3. Analysis of the degree of party competition reveals that one-half are Republican, one-third are Democrat and one-sixth are Marginal, and that one-half are one-party, one-third are modified one-party, and one-sixth are two-party areas. Republican presidential gains came in all three party areas, increasing proportionately as the Republicanness of the areas increased, but such large gains were not found in Republican congressional voting.

   Marginal areas moved heavily to more Republican presidential voting but held to the 1932 patterns in congressional voting. Democrat areas showed some gain for Republican Presidential voting but less for Republican Congressional voting, while Republican areas showed heavy gains for both offices. Democrat and Republican areas from 1948-1956 tended to support their parties' presidential candidates, while two-party areas showed movement after 1948; but the postwar presidential pattern is one of massive stasis, with such movement as there was being from Democrat and Marginal areas voting Republican. By 1956 the gap was quite wide between the amount of support given to Eisenhower but not given to Republicans in other offices, demonstrating Republican percentage declining as the level of office descends.

4. Specific economic characteristics distinguish D, TP, and R suburbs, such as to denote as generally Democratic the industrial suburb, generally Republican the residential suburb, and generally Two Party the mixed suburb. Rent level and manufacturing activity are the best indices for distinguishing such political patterns, population and housing growth the least.

Speculations

A notable finding in this research has been the detection of non-Republican suburbs with their industrial and lower-income characteristics. Despite this, the weight of the suburban vote in Republican strength is impressive. Minor changes in Republican percentages in these areas are not as important as the fact that these percentages deal with massive population sizes, as recent census reports attest. The significant strategic value of the suburb in Republican electoral campaigns is to neutralize or reduce the equally large but Democratic majorities in the metropolis, thereby elevating the importance of rural and small city areas with their normal Republican inclinations.

Although, as Schnore has shown, the residential suburb is growing at a rate faster than the industrial suburb, the residential augmentation may be increasingly offset by the increasing decentralization of industry, much of which is to the newer suburbs.[10] In political terms, this means the Republican growth in numbers in the residential suburb will be reduced in weight by the Democratic numbers attendant upon the growth of industrial suburbs.

Another finding reinforces the situation elsewhere detected that voters' Republican preference for the presidency does not carry over to other offices; even in the suburbs, with their heavy Republican weight, Republican congressional and mayoralty candidates fail to secure support equivalent to that given the presidential candidate. In a presidential campaign where the attraction of an Eisenhower personality is absent, even less carry-over to other candidates can be expected. Indeed, if the magic of his personality which played such a great role in electing

him (as the recent The American Voter testifies; cf. 524-528) is absent in further Republican candidates, the great set of factors which normally militate against Republican victory for the presidency will be compounded. The 1960 Presidential election, as in so many other aspects, will be crucial in determining the limits of suburban Republicanness.

Much of the sophisticated analysis of political voting behavior, as exemplified in the University of Michigan surveys, when it deals with voting preference for an office focusses heavily upon the presidential office. But, as this research into suburbia indicates, many voters even in heavily Republican areas exercise a differential vote among offices. More is needed on the voter's perceptions of the office voted for. For example, do voters retain an almost subconscious Madisonian democracy concept of balancing the factions of society, and so vote for different parties for various offices? Do their political perceptions involve a different conception of what is needed in a candidate for different offices? Work along these lines needs to proceed from concepts of personality related to political behavior, much of which is not but in the beginning stage of theoretical formulation. (Cf. Ch. 18, The American Voter).

The findings on the degree of party competition reinforce a growing belief that at the lower levels of organization - the congressional district, city, suburb, rural county, and small town - the American party structure is characterized by dominant one-partyness. Only one of six suburbs was found to be competitively two-party, and when measures of vote change were applied, stasis was more characteristic than movement in Democratic and Republican suburbs, i.e., the rich get richer and the poor get poorer. For those who see danger to democratic values in such conditions, one soothing observation is possible. The tables on vote change point out that there is on occasion some switching of allegiance in these suburbs. Heavlily Democratic suburbs do support an Eisenhower while suburbs heavily Republican in presidential choice are less so in congressional and mayoralty contests.

In short, American suburbs are not as frequently and heavily Republican as supposed, considerable variation exists in the distribution of their vote for different offices, and the variations, while clearly associated with certain economic characteristics, may also be traceable to other considerations, such as the nature of the office contested.

FOOTNOTES

1. Fred I. Greenstein & Raymond E. Wolfinger, "The Suburbs and shifting Party Loyalties," Public Opinion Quarterly, Winter 1958-59, 473-82; Jerome G. Manis & Leo C. Stine, "Suburban Residence and Political Behavior," ibid., 483-89.

2. Samuel Lubell, Revolt of The Moderates, (Harpers, New York, 1956) 276-7. Note, however, the odd and unexplained sentence: "Some suburban returns I have analyzed point to a long-run trend to make the suburbs somewhat more Democratic, although not on any scale that would threaten Republican ascendancy in these communities." For other of Lubell's data, cf. ibid., 112-14.

3. Ibid., 276.

4. Austin Ranney & Willmoore Kendall, Democracy and the American Party System (Harcourt, Brace & Co., New York, 1956) 161 ff., or, by the same authors, "The American Party System," Amer. Pol. Sci. Rev., June, 1954, 477-85. For a critique of this system for its failure to show the rate of change of party control of an office, cf. Joseph A. Schlesinger, "A Two-Dimensional Scheme for Classifying The States According to Degree of Inter-Party Competition," ibid., December 1955, 1120-28; analysis later in the present paper takes into account Schlesinger's general concept but not his procedural approach.

5. H. Paul Douglass, The Suburban Trend, 'New York, London: Century Co., 1925) 84-5.

6. C. D. Harris, "Suburbs," Amer. Journal of Sociology, 1943, 6.

7. "The Functions of Metropolitan Suburbs," ibid., March 1956, 453-58; "The Growth of Metropolitan Suburbs," Amer. Soc. Rev., April 1957, 165-73; "Satellites and Suburbs," Social Forces, December 1957, 121-27; "Xomponents of Population Change in Large Metropolitan Suburbs," October, 1958, 570-73. Cf. also, Walter T. Martin, "Ecological Change in Satellite Rural Areas, "Amer. Soc. Rev., April 1957, 173-83; Leslie Kish, "Differentiation in Metropolitan Areas," ibid., 388-98. For some methodological problems in suburban study, cf. Otis D. Duncan, "Research on Metropolitan Population: Evaluation of Data," Journal of the Amer. Statistical Assn., December 1956, 5.

8. Victor Jones, "Economic Classification of Cities and Metropolitan Areas," Municipal Year Book. 1954, 62-70 and ff.

9. High Republicanism may well exist in other than fast growing suburbs; restricitve zoning laws can maintain high inccme suburbs in their Republican patterns.

10. Martin, op. cit., Amer. Soc. Rev., April 1957, 173-83.

THE FEASIBILITY OF A FEDERAL-INTERSTATE PARTNERSHIP IN WATER RESOURCES DEVELOPMENT WITH PARTICULAR REFERENCE TO THE DELAWARE

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Paper prepared for presentation on a panel, "Feasibility of Federal-Interstate Partnership in Water Resource Development", arranged by THE WATER RESEARCH FOUNDATION FOR THE DELAWARE RIVER BASIN and sponsored by the Regional Science Association at the 56th Annual Meeting of the American Political Science Association, New York, 1960.

At the outset I think I should make articulate my major premise. We have a federal system and unless we wish forthrightly to abandon that federal system or to risk the possibility of its decline into disabilitating confusion, we must make conscious efforts to maintain its viability. This does not mean that we should combat change. FAR FROM IT! We must constantly be seeking new ways of applying our federal pattern to emergent problems today. One of our troubles is, it seems to me, that we continue to think of federalism in terms of limited government. The role of modern American federalism is not that of limiting the power of the central government. Today its great value lies in the fact that it permits and encourages a wider range of initiative in the component governments than does any other system of government. It provides devolution of administration with freedom to initiate. It is no longer realistic to view it in terms of a rigid division of powers, -- of a division into spheres of jurisdiction. We must still, if we are to keep the basic form essential to federalism, delineate to a degree general areas of responsibility for both levels of government, but we must not freeze these into a mutual exclusiveness. By and large, the application of any concept of preemption should be limited to clear instances of actual conflict. In umpiring the jurisdictional competence of our two levels of government, "freedom should be the rule, restraint the exception" for the states as well as the nation. We have developed many devices for federal-state cooperation to effect what we call cooperative federalism.

We must go even further. We must seek the integration of federal and state action in areas where such closer coordination is necessary to avoid conflict, confusion or displacement. In some areas we may accomplish this through the welding of federal and state law into a single or interwoven body of law. In others we can create joint instrumentalities of the federal and state governments. In still others, we might utilize officials of one level of government to act as the voice of their jurisdiction within an agency of the other level. In some areas it may be desirable to use a combination of these methods. That is what is proposed for the Delaware.

At the state level we have made some progress in the utilization of these new approaches. During recent years we have become accustomed to creating joint agencies of several governments. We have fashioned common bodies of law effective in a number of jurisdictions. We are quite accustomed to the idea of officials of a state serving in an agency together wih officials of other states. However, at the federal level there is less familiarity with these concepts and it seems to me a tendency still to think in terms of compartmentalized federalism. Here I think is the basic hurdle we must overcome if we are to make feasible the utilization of a federal-interstate agency for water resources administration.

The problem we are trying to meet is the problem of water resources administration in our federal system. It is, of course, true that there are problems of our water resources administration which are not primarily attributable to our

federal system. The long standing competition and conflict among federal agencies is largely a phenomenon of the national plane of government and could continue in a completely centralized system. Even so, the federal-state aspects of the problem of water resources administration have been a cause of serious conflict and dispute sharpened in the last few years by new disputation as to the relative roles of federal and state law.

The first question that we must examine is why has a federal-interstate agency been recommended by the Syracuse report and the Delaware River Advisory Committee? It seems to me that two quotations from the report of the Presidential Advisory Committee on Water Resources Policy of 1953 provide a major part of the answer. They say, "The greatest single weakness in the federal government's activities in the field of water resources development is the lack of cooperation and coordination of the federal agencies with each other and with the state and local interests." At another point they recommend - "That planning for water resources and related developments be conducted on a cooperative basis with representatives of all federal, state and local agencies involved and that this joint participation be continuous from the beginning ....." To these statements I would add another statement from that report to the effect that while consideration of important inter basin relationships should not be prejudiced, "there has been a general acceptance of the river basin or major drainage area as ordinarily the most appropriate geographical unit in planning water resources activity." Given these objectives

and with full recognition on my part of their statement that "there is no single uniform policy, no magic formula relating to water resources which can be applied to all parts of the country at all times and at all places," then I maintain that the type of agency which would most effectively achieve these objectives would be the federal-interstate agency which has been proposed for the Delaware river.

Obviously, since this is a joint agency of both the federal and state governments embodying representation of the interests of all levels of government, it can achieve a more effective coordination of water planning and administration as between the two levels than any of the other various forms which have been advocated including the interagency committee, the federal authority and the so-called two agency approach. Moreover, it can meet better than any other approach to comprehensive basin administration the problems of displacement and duplication which occur when an agency is created to administer a river basin and the states and the federal agencies are not integrated into the structure. It also mitigates another problem of growing seriousness to which I have alluded, namely, the problem of conflict and confusion in the realm of water law. It does this through the formulation of a single body of law which would be both federal and state, common to all the jurisdictions of the valley, through the device of a federal-interstate compact. At this time I do wish to add that this result conceivably could also be secured through an interstate compact to which the federal government was not a party, but whose provisions it adopted by

federal statute, preferably the act of Congress giving consent to the compact. The importance of the federal-state legal issue can be understood better if we take time to review the present situation with respect to water and federal law.

As you all know, the doctrine of equitable apportionment is applied by the Supreme Court to the settlement of interstate disputes which have not been settled by means other than lawsuit. This doctrine contains no substantive water law and, in any event, provides only for the apportionment of water among states. It is of no use in determining the rights of individual users or projects. Equitable apportionment is only a fancy way of saying that in the absence of solution by compact, the Supreme Court will make an interstate apportionment of water in accordance with principles of a fairness. What this may mean in any specific situation is dependent upon the litigation to determine.

There is no general system of federal water law, nor is there any administrative machinery at the federal level for the administration of water rights. The O'Mahoney-Milliken Amendment to the Flood Control Act of 1944 affects the problem to some degree in the reclamation states by assigning navigation the lowest priority for waters rising west of the 98th meridian. Aside from this, there are only a collection of specific statutes of the project authorization type which seek to assure the availability of water rights for individual federal projects. But this project approach seldom takes any account of comprehensive water planning and is never related to the needs (especially future needs) of other users in the same watershed.

Water rights law is an essential part of water resource planning and development. In the West, this has been recognized virtually from the beginning because of the scarcity of water. But this recognition has not been enough to prevent the development of confusion as the federal government (Notably the Department of Justice and the Federal Power Commission) have sought, with increasing success, to exempt the United States from generally applicable water law. In the rest of the country, the significance of water rights law has been less apparent in the past because of the assumed superabundance of water. Even so, the need to regulate the taking of water has been important in a number of ways. The riparian doctrine is state law and has afforded protection to downstream interests. Almost all states require state approval before a source of municipal water supply can be developed.

Such regulation of water rights and use seems likely to increase, even in areas such as the Delaware. The Model Water Use Act, for example, recommends a permit system for the diversion of water.

Of course, the federal government must, when it undertakes a water development project, be assured that the water rights situation will be such as to make its investment sound. On the other hand, unintegrated federal development is bound to make a shambles of comprehensive basin development. It injects a large element of unpredictability.

A federal valley authority does not seem to be the appropriate way to develop the Delaware. However, aside from a federal-interstate compact, or the possible alternative I have

indicated of incorporating the basin interstate compact into federal law, it seems to be the only way of achieving legal integration. If used, it would have to endow the federal agency with water rights jurisdiction now exercised by the states. Because of the nature of the Delaware and the pattern of its socio-economic growth, the federal agency would have to inherit a determinative power over municipal water supply, withdrawal of water for supplemental irrigation, and all other uses normally under state law. There is no compelling reason why this should be done. Certainly, it would be unfair to the health of state governments in the Delaware Valley to do it there and not elsewhere in the country. Moreover, the federal government is not equipped to take over the water rights administration job, either in the Delaware or in the country as a whole.

The virtue of the federal-interstate compact, as it relates to the administration of water law, is that it combines the powers of both federal and state governments in a way that recognizes the needs and responsibilities of each within an integrated framework. The states would contribute their water rights jurisdiction, but they would have a substantial voice in the running of the agency. The federal government would contribute its activities in project development, and it would have a substantial voice in the running of the agency.

A completely federal or completely state approach to Delaware development runs the serious risk of importing the present confusion surrounding water rights into the Delaware Basin on a large and critical scale. The federal-interstate compact would make it unnecessary to grapple with this issue.

If the federal-interstate agency approach for comprehensive basin development is the most effective in meeting our problems of integrating federal and state planning and administration and federal and state law, what are the obstacles to such an agency? In the case of the Delaware several have been mentioned. For instance, obviously we must secure agreement among the states, and the key to that agreement is largely the settlement of what might be called the New York City-Philadelphia issue. I feel confident that this can be solved with some willingness by these two vitally interested cities to explore compromise phraseology. Even if we are unable to secure agreement among the states, this in itself, while it would mean failure on the Delaware, would not necessarily mean that the federal-interstate approach in itself was at fault. To my mind, the principal obstacle to the feasibility of urilizing the federal-interstate agency approach is the seeming reluctance, as evidenced by their reaction to the proposed Northeastern Resources Compact, of a number of federal administrative agencies to utilize the somewhat similar interlevel approach of that interstate agreement. As you all probably know, the Northeastern Resources Compact would create a commission consisting of one member from each of the six party states and seven federal members representing departments or agencies (not named) having principal responsibility for water and related land resources development. The commission would be given the responsibility of recommending to the states and the United States or any intergovernmental agency upon concurrent majorities of the federal and state members changes in law or policy which would promote coordination or resolution of problems in the water and related land resources field. While the

commission's efforts in the coordination of work and resolution of conflicts may be directed to all state and federal activities in this field and would include coordination of basic data collection and interpretation, project investigation and planning, construction and development, programming and scheduling and encouraging referral to the commission of plans and proposals for projects, it should be emphasized that it would have only recommendatory powers. The Northeastern Compact did not call for the federal government becoming a party -- it merely provided for federal participation through representation and conditioned the compact's taking effect upon such federal representation being provided. This condition, of course, was based upon the major premise of the agreement that in order to have effective federal-state water resource planning in that region, the federal government must take part in the planning agency. The discussions between the state and federal people on this issue and particularly the hearings on the consent of Congress before the Public Works Committee of the House of Representatives disclosed the reaction of some of the federal agencies. It is clear that they were disturbed by what for them was the novelty of the approach. In fact, in the Congressional hearings there was evidence of misunderstanding of what was intended under the Northeastern Compact. Generally, the agencies indicated that they preferred the two-agency approach with which they are familiar. Several legal issues were raised, although often through the means of posing questions rather than by definite assertions of illegality. By and large these legal issues were also based on the feeling of some of the agencies that there was a lack of precedent for such an arrangement.

Now I am quite certain that when there is time to make a more thorough review, the federal agencies will find that this approach is not so novel and that there are precedents. For instance, it was widely asserted in the hearing on the federal side that while there was federal representation on other compact commissions, there was no case in which federal representatives had the power to vote as provided in the Northeastern Compact. As a matter of fact, in the comparatively recent Colorado Upper Basin compact the United States is represented on the regulatory commission established by the compact on a parity with each of the signatory states and enjoying the same voting rights as any other signatory.

Another collateral assertion which has been made for quite some time, not only with respect to water resources but as regards other problems of federal-state relations, is that it is not possible legally for a governor to appoint a state representative on a federal agency. Here again there is clear precedent. The Niagara Falls Bridge Commission is a federal authority whose United States members are appointed by the Governor of the State of New York. On occasion an even more fundamental obstacle has been implied, namely, that a federal interstate compact would be unconstitutional because there is no specific authorization of such an arrangement in the language of the constitution. As State Senator Barrett of New York said in his statement in support of the Northeastern Compact, "To say that this procedure is constitutionally barred would be to hold that the necessary and proper clause of the constitution is ineffectual only when the federal government seeks to join the states in a cooperative arrangement."

While the Northeastern agreement itself did not include the federal government as a party, it was argued by one agency in the hearings that in view of its provision conditioning its taking effect upon federal participation, it was "subject to the same questions as would exist were the agreement between the states expressly dependent upon the United States signing the contract as aparty thereto." If the position taken by this federal agency that a compact conditioned upon federal action cannot be distinguished from a compact to which the federal government is a party is correct, then we have precedent for federal participation through both methods. The outstanding examples are the Republic River and Belle Fourche compacts. In both compacts there is provision that they shall become operative only when Congress in its consent legislation agrees to observe certain specific principles set forth in the interstate agreements.

Certainly, the legal questions which so far have been suggested as obstacles to the integrating devices for federal-interstate partnership considered by this paper seem far from insurmountable. With respect to the use of a federal-interstate compact, the federal attitude certainly can be described as confused if while on one hand it is asserted that the federal government cannot participate directly in an interstate compact, on the other it is argued in justification of a congressional demand for the working papers of an interstate compact agency that such bodies are federal agencies merely because Congress consented to their creation under Article 1, Section 10 of the constitution.

There are two other questions raised in connection with federal-interstate partnership in the water resources field which should be

mentioned. The first is that the use of a federal-interstate agency created by compact is undesirable because it cannot be subjected to effective control by the participating governments. While experience has shown that interstate agencies can be efficient administrative mechanisms, there are problems with respect to integrating them into the administrative structures of the jurisdictions party to the compact. Except for the fact that more than one government is involved, these problems are identical with those raised by the use of the authority device on both the state and federal levels. It can be argued that the multiplicity of jurisdictions weakens effective control by spreading the responsibility for exercising it. It can also be argued that controllers multiply with jurisdictions. I think that our experience indicates clearly that there are effective controls of intergovernmental agencies and that if there is a problem, it is that of utilizing those controls. Moreover, in the case of a federal-interstate compact, the very serious questions raised by the Congressional investigation of the Port Authority are no longer relevant since the federal government in such a case will be a participating jurisdiction and such an agency would clearly be subject to both federal and state supervision.

Finally, it is often said that the feasibility of federal-interstate partnership arrangements is very questionable because of the probable inadequacy of state financial participation. We may recognize possible state financing problems, but the dogmatic application of this agreement would be oversimplification. In the case of the Delaware, the City of New York has made a huge expenditure, in the

neighborhood of 600 million dollars, with the cost of the aqueducts amounting to about a third of that figure. As I understand it, the entire program for the Delaware now envisaged by the Army Engineers totals 200 million dollars.

While the term partnership may be felt by some to be too strong to describe the federal-state relationship involved in the St.Lawrence Development it can certainly be described as a coordinated federal-state development. But however described the relative financial role of the federal and state governments in the joint power and navigation development in the International Rapids' section is significant. The total cost of the United States half of the power development, excluding transmission lanes, will be approximately $335,000,000, all of which was raised by the sale of revenue bonds by the New York State Power Authority. The Province of Ontario will have spent an approximately similar amount. The navigation features of the St. Lawrence Development Corporation cost the United States government $125,000,000. The Government of Canada's share in this particular project was considerably less. Here then is a project in which the fundamental share of state government far exceeds that of the national.

In the last analysis, the feasibility of federal-state partnership in water resources administration depends upon our willingness to adopt this approach and to devise mechanisms for its effectuation. The success of the Delaware proposal would open new prospects in water resource administration.